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THE REPUBLIC AS A FORM OF
GOVERNMENT.



THE REPUBLIC
AS A FORM OF GOVERNMENT
OR
THE EVOLUTION OF DEMOCRACY
IN AMERICA.

By JOHN SCOTT

(Of *Fauquier*).

AUTHOR OF "THE LOST PRINCIPLE OF THE FEDERAL GOVERNMENT"
AND OF "PARTISAN LIFE."

"Man, as the minister and interpreter of nature, does and understands as much as his observation on the order of nature, either with regard to things or the mind, permit him, and neither knows nor is capable of more." BACON—*Novum Organum*.

"The wit and mind of man, if it work upon matter, which is the contemplation of the creatures of God, worketh according to the stuff and is limited thereby; but if it work upon itself, as the spider worketh his web, then it is endless, and brings forth indeed cobwebs of learning, admirable for the fineness of thread and work, but of no substance or profit." BACON—*Advancement of Learning*.

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As a token of respect and affection I desire to offer this product of my pen to the venerable seat of learning, King's College, Old Aberdeen, in which my ancestors and collateral kindred were professors continuously through so extended a period. My family in Virginia all look with satisfaction and pride to that luminous centre.

THE AUTHOR.

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INTRODUCTION.

PLAN OF THE WORK.



IN the summer of 1867, in allusion to the war of the American sections, then recently over, I observed to a London publisher, the head of one of the great houses, that all candid thinkers must agree now that the Republic does not afford a stable footing for constitutional government. Quickly, in response, he proposed that I should write a book for him to prove what I had said to be true, but stipulated that the work should be completed by the end of two years. I told him I would think of it, and mentioned the publisher's proposition to a cultivated and intelligent English gentleman residing in London, one of the *literati* of that famous capital, to whom I had carried a letter of introduction, and who, when in America, had seen "The Lost Principle," then a new book. But he replied, "The time is too short; take four years, and the book will fructify when you are in the grave." The subject dropped from my mind, but, after my return to my home in Fauquier county, it came back to me and dwelt with me, and this volume has been the result, after the impediments and delays of official engagements.

Its title might indicate that the book is a treatise upon Republican government, and so it is intended to be, although it is occupied throughout with an examination into the working and principle of the Republic

of the United States, and general propositions are discussed with reference exclusively to that instance. Distrusting theory, so prolific of error, I determined to apply to my subject, with the utmost strictness, the inductive method of inquiry, as recommended in the "Organum" of Bacon and practised in the sciences, satisfied, by that process, that the Republican system, now uppermost in men's minds, best would be laid open. If Bacon's method be indeed applicable to government, we must bring forward particulars, or individual cases, with a view to establish some general conclusions; "for induction is a kind of argument which infers respecting a whole class what has been ascertained respecting one or more individuals of that class."¹

The example of the United States, presenting so grand a scale of experiment, is so pregnant with instruction, indeed in its lesson is so complete, that we need not proceed further in the investigation to enable us to deduce satisfactory conclusions with respect to the nature of popular government. *In parvo*, this is the plan of my book—an humble contribution to safe government whilst a Democratic revolution threatens the stability of Europe.

A British author of celebrity and genius objects to Democracy, that it tends to degrade society and government by putting the uninstructed in the lead, achieving, if it be true, a victory over nature: "It makes," says the author, "the ignorant multitude the judges of the largest questions, both political and religious, till we shall have no institution left that is not on a level with the comprehension of a huckster or a drayman. There can be nothing more retrograde—losing all the results of civilization, all the lessons of Providence—letting the windlass run down after men have been turning it painfully for generations."² These are but the plausible guesses of

¹ Whately.

² George Elliot.

speculation, but presenting an untenable issue to the Republic, and producing all the injurious results consequent upon defeat. It is based on the erroneous belief that an unlettered majority govern in a Republic. The least observant tourist from the Old World who visits the West speedily detects the error, and a partiality for popular government may chance to settle into a conviction in favour of it ; for it is as impolitic in argument as in war to join battle on a field which gives the advantage to your adversary.

For more than a century Democracy, in the United States of America, has been the supreme power in the State, yet has civilization in that great country betrayed no tendency to retrace its steps, nor its vital germs any inclination to sicken or die, but, stimulated by enterprise and the robust genius of the Anglo-American, healthy growth is seen in every direction. Those industrious and inseparable partners, labour and capital, are found accumulating their vast stores and various works on every theatre ; whilst unmolested and protected by all the guards of the law, the aristocrat of wealth—the fortunate and envied nobleman of the Republic—enjoys his palace in Fifth Avenue. Nowhere is acknowledged so soon, and room made for it, the native superiority of intellect and culture, the inclination in the Republic being rather towards the disesteem and neglect of useful mediocrity. But if these dreads should all be justified by the event, it is hardly probable that the majority, composed of various and rude materials, would decline a mode of political life, if the principal purposes of government are secured by it, because it vulgarizes society, or, in nicer points, causes it to retrograde somewhat. If the opposer of popular government desires to bring the system into discredit, and to banish it from the inclinations of men—to shut the wide-extended and flaming gates of Avernus—some argument must be discovered to convince the people, or the thinkers among them, that their own

welfare demands the overseership of the nation to be intrusted to other hands than their own—that the safety of the ship of State requires a captain or a commodore to be put in the command rather than that great trust should be confided to the crew and passengers. Not until that opinion is rooted in a nation's creed will conservatism in government and society finally be victorious, for the argument of interest, when cleared of doubt, always prevails. The questions to be put and answered in this highly important inquiry are : “ How has the experiment resulted where a people's government has been satisfactorily tested ? Does it act impartially among the contestants for its favour and regard ? Does it govern with an equal or a steady hand ? Or, is it controlled by associated capital or by a selfish voting combination among the people, working for its own emolument and benefit, yet professing to be a popular agency, whilst the indigent and feeble are pushed to the wall ? In short, is not the Republic a plutocracy instead of a democracy ? Do the people govern in the Republic, or, whilst nominally sovereigns, are they not in fact superseded by a subtle power which the system generates ? If so, what is that power, and does it answer for permanent and successful government ? Finally, does the popular form promise stability, or does it tend irresistibly to confusion and anarchy, to be succeeded by the calm of the sword ?—a government of Oliver Cromwell and his military saints, or other kind of army dominion ? ” With fluent speech theory does not respond to these interrogations with greater satisfaction than it does to the dark problems of science which, in this splendid era of discovery, experimental research is unfolding each hour to curiosity or interest. Amidst her infinite distances, her cloud-capt mountains, her forests, her prairies, her inland seas and majestic rivers, America, in rustic attire, but informed by her own experience, stands ready to answer all these

questions, and the polite and lettered East may learn from the New West the philosophy of the Republic. In his day, in defence of the settled order of England, Edmund Burke, with the hundred arms of Briareus, strove with French Democracy and triumphed—a single Spartan holding Thermopylæ—and now from the cells of philosophy great Bacon is invited to come forth and combat American Democracy. Seated under his burning lamp, we have discovered that the body of society is so pressed and joined together, and its elementary particles are so engaged, that a people cannot be self-governed, there being, when we come to understand our subject, to appreciate the problem to be solved, no such thing, either in the present or in history, as a government by the people, and that, because of the inability of the sovereign power to act, a cunning and plausible pretender intrudes into the throne. The acquisition and development of this seasonable but unwelcome truth from the teachings of his “Organum” will prove one of the greatest of the many benefits which Francis of Verulam has conferred on mankind. Inasmuch as popular self-government is not possible, for a far different and more satisfactory reason than that the working poor man cannot, with safety to the State, be intrusted with the ballot, and therefore ought to stand excluded, we get rid of a question full of irritation and mischief by informing the people themselves, the discerning mass of society, what that more satisfactory reason is. States then will be founded on facts and the eternal principles of correct reason, and not on the theories and conjectures of speculation.

According to Boswell, Doctor Johnson thought a book ought not to be too large to be carried in one's pocket, and I have compelled this one to conform to that convenient size.

*Warrenton, Fauquier County, Virginia,
United States, 1889.*

NOTE.—“Plutocracy.” This appears to be a recent word, introduced into the American dictionary of the English language to indicate the body into which the Republic of the United States has now degenerated. It is not found in Doctor Noah Webster’s great lexicon of our language, as finally it left its creator’s hands, nor yet is it to be found in the body of the late Yale edition of “Webster Unabridged” (1888), but we discover it, almost in the act of birth or naturalization, in the supplement of new and uncommon words attached to the work. In the inevitable process of evolution,—of the flower from the bud, of the serpent from the egg,—plutocracy has grown out of democracy. In the natural order the object or thing first presents itself, and then men find a name for it. So it has been in this case. With its Greek original and recent citizenship, “plutocracy” is thus defined by the ripe scholars of Yale University: “A form of government in which the supreme power is lodged in the hands of the wealthy classes alone; government of the rich; also a controlling or influential class of rich men.”





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CHAPTER I.

"Yon same star, that's westward from the pole,
Had made its course to illumine that part of heaven
Where now it burns."

Hamlet, Act i. Scene i.

"Many of the changes, by a great misnomer, called Parliamentary reforms, had they taken place, not France but England would have had the honour of leading up the death dance of democratic revolution."—*Edmund Burke.*

"Few people take the trouble of trying to find out what democracy really is. Democracy is nothing more than an experiment in government more likely to succeed in a new soil, but likely to be tried in all soils ; which must stand or fall on its own merits, as others have done before it. For there is no trick in perpetual motion in politics any more than in mechanics."—*James Russell Lowell, "Democracy."*



AMERICA is a country in which one of the greatest political experiments, in the history of the world, is now performing, and presents the most profound and momentous study to the statesman and philosopher. In view of this declaration from so excellent a thinker and writer as Washington Irving, it may be a useful work, after the lapse of a century, to examine, from the familiar standpoint of a citizen, the Republic of the United States by the full light of

its recorded action. On account of her grand experiment with the Republic, if it has proved successful, America, naturally, would be a guiding star to other nations in the search after democratic liberty; but if the trial, when understood, has been disastrous, her example ought to serve as a beacon, a signal light on a headland, to warn the political mariner not to visit that dangerous shore. If on that remote continental theatre, with a constitution sprung from the very brain of Jupiter, democratic government cannot endure the crucial test of experiment, but if, even now, it is manifest to the discerning eye that the unstable and trembling structure is but a stage in the progress of a great people to anarchy, and its consummation military despotism, every prudent mind will conclude the ill-success to be referable to incurable infirmities in government of the popular type, and not to accidental, or remediable, causes. Moreover it will be a wise lesson to teach, that power, in that stronghold of democracy, has manifested its eternal characteristic, and has established a cruel despotism of section and class, though it still flatters the individual with the titles of liberty. To the eye of the astronomer, the moon, as it swims in the firmament, is a body of exceeding brightness, but when he applies his telescope, the beautiful orb loses its splendour, and reveals itself as a region of volcanic fires, and ruin seems of ancient pile; so America, as seen from without or within. Republics consist of maxims and principles of liberty and justice by which, as by a chart of navigation, their governments are supposed to be conducted. As salt loses its savour, venerable charters lose authority. Governments then become failures, and not the less failures because veiled by the ceremonies and names of an obsolete liberty. Forms survive the realities which they invested, spirits of despotism inhabit bodies of liberty, and a hull is all that is left of a

vanished republic. The banner of a republic flutters from the tower, but an enemy has silently captured the fortress. Hitherto speculation with its illusions has been the field on which democratic government has been considered. The American fathers judged it by that uncertain, fitful, and transient light. But we have better oracles. If we do not discover the truth, the blame will rest with our own indolence or credulity; for government is but a province of nature, and is embraced in the extensive jurisdiction of the inductive philosophy. Its forces are visible and measured agents; its results are public facts. But whilst science adds this great kingdom to her growing empire, justice demands that, humbly and reverentially, she acknowledge a further debt to the immortal Bacon, whose philosophy, revealing the unknown, and making the obscure manifest, accompanies the ages until, in every district and corner of Nature's kingdom, it establishes "the reign of man," unfolding to creation the wonderful destiny it has prepared for him. Continually science, under wise pilots, is sending forth ships to explore unvisited seas. Now a hemisphere is discovered, now a continent, or some isle, deep-hidden from human curiosity; but the spoils of all are gathered up and laid at the feet of this throned, island Empress-Queen, that her power may be augmented, and the sphere of her beneficence and glory enlarged.

The Republic of the United States was regarded, by the men who founded it, as an experiment in politics in which the colonies had been embarked, by the intrigues of the Court of France, seeking, in the bitterness of national animosity and rivalry, to dismember the British Empire.¹ When the existing

¹ "Hardly a month after the last Acts had been passed, the French Ambassador at London addressed himself to Franklin in a style that discovered to this acute politician the wish of the French Court to inflame the quarrel between Britain and America. Nor was this the only, or most notable, attempt of the French

constitution of the Republic was submitted to State conventions for rejection, or acceptance, it was urged, as an argument in favour of acceptance, by James Wilson of Pennsylvania, one of its skilled architects, that "This system, if adopted, will lay a foundation for erecting temples of liberty in every part of the earth." The statesman spoke advisedly, for, from the period of the installation of that government, it has been a propaganda of republican principles. Within the sphere of its activity and influence, this has been effected by open patronage of popular government, yet more even has been done by the silent influence of example, confined only by the expansive circle of ideas. The prophetic utterance, at this time, the more challenges attention, as one of those fair temples has arisen, like an exhalation, and has planted itself in Western Europe, where but yesterday a splendid monarchy stood, exciting uneasiness in every statesman of the Old World. It looks as though the democracy of the West, in a crusade of ideas and principles, has precipitated itself on Europe, shaking and undermining monarchical government, deep-rooted in habit and old tradition.

It brings to mind a prophecy of M. de Tocqueville,

Court to animate the spirit of resistance of the Americans, and promote a total breach with the British nation. Both prior and subsequent to the present period, various emissaries employed by the Court of France travelled in disguise through the American colonies, examining in what points the British Dominion was most vulnerable, and seizing every opportunity to fan the flame of discontent, and insinuate that revolt would be facilitated by foreign assistance. The most distinguished of these was a German baron named Dekalb, a brave and enterprising officer, who had long served in the French army. The employment of Dekalb and other agents in America is an undisputed fact. He, with other French officers in the American service, maintained a close correspondence in cipher with the French Court."—*Frost's "History of the United States."*

Botta states that the zeal of the patriots of Boston was stimulated by French gold—what Dean Swift calls "the yellow boys."

contained in his well-remembered work on the social and political institutions of America, written and published more than forty years ago, that democracy, at no distant date, would assert and establish its dominion everywhere within the Christian pale. He appeared to believe that it was a ground-swell of human action and thought, and that the invisible force which impelled the tides had set it in motion. The intelligence and craft of the statesman, then, would be exercised in renovating and remoulding the ancient states of Europe, and adjusting them to this new power. That philosopher, or pseudo-philosopher, said: "The organisation and establishment of democracy in Christendom is the great problem of the time. To the evils which are common to all democratic peoples the Americans have applied remedies which none but themselves ever thought of before; and though they were the first to make the experiment, they have succeeded in it. Those who hope the monarchy of Henry IV. or Louis XIV., appear to be affected with mental blindness, and when I consider the condition of several European nations—a condition to which all others tend—I am led to believe they will soon be left with no other alternative than democratic liberty or the tyranny of the Cæsars."

With this alarming prediction sounding in our ears, it will not be considered irrelevant to the times in which we live, or to the events that press hard upon us for solution, and before Europe takes another step in that direction, to invite the reader to examine for himself, not looking through the glasses of M. de Tocqueville, and ascertain how the experiment of self-government has prospered in the New World, where a safe unenvied asylum has been offered to popular government, with every condition most favourable to a successful trial of it—an extensive, fertile, vacant country, suited to every occupation of prosperous industry; an intelligent, civilized people of the

foremost breed, trained to such institutions ; wise and able men to plan and execute for it, and the crowning advantage of isolation from injurious contact with older civilizations charged with opposite ideas. From the forests of Maine and the prairies of Wisconsin, to that remote land, amid Antarctic snows, which lies beyond the Straits of Magellan, Ultima Thule, democracy has held its court and high carnival. There it has wantoned at will, and has displayed all its good qualities, and every vice of its undisciplined and forward nature,—its ferocity, its despotism, its cruelty, its grossness, its avarice, its venality, and inevitable tendency to misrule and anarchy. Wisest statesmen have constructed dykes and walls to confine it, but, when its passions are stirred, it has shown itself not more amenable to authority than ocean when scourged by the tempest. This century, in the annals of the human race, will be distinguished and remembered as the century of democratic experiment, when every European State contained a republican party in the ranks of its population.

But in that century of triumphant democratic life some truths have been obtained which it will be profitable for Europe to know whilst it is engaged with the problem which France, so suddenly, but England, more gradually, has forced on it for solution. But, before we proceed to examine the conclusions to be deduced from the constitutional experiment in the West, there is a preliminary inquiry which merits and will receive attention,—the inherent right of every political community, represented by its majority, to establish, or abolish, government at pleasure. That important principle, in the politics of every free state, was obtained from the revolution which disjoined the North American colonies from the parent state. How has it fared in the century of American experience in free government? Has it been honoured and confirmed as still the sub-base of all republican government,

or has it been insulted, repudiated, and overthrown? In this connection no question of so great moment could engage attention. It vitally concerns the voting mass, for from it has been derived all their right to govern society.

CHAPTER II.



THE Civil War of 1861, which incarnadined the Union, was the first explosion of the political volcano charged with combustibles by Washington and his co-workers. Before that time the Federal mountain had emitted smoke and flame, but then, from its fuelled entrails, the eruption burst forth. As, amid scenes of desolation and sorrow, the war was ended, mankind beheld half the states of the Union return, with shattered ranks, to a connection which they hated, under the compulsion of great armies, and loaded with the disabilities and burdens resulting from a conquest. They saw those subjugated states despoiled of every vestige of political right, and reduced to the lowest state of dependence, by a government which, in great part, was their own recent and voluntary creation. Truly a war of conquest was an instructive spectacle in the politics of a series of connected and self-governing states! Europe, an interested, and not unintelligent, observer of democratic development in the West, knew then, or might have known, that the rulers of the great Republic had destroyed the foundation on which its designers and builders had erected it, and had placed it on an entirely new bottom. From that time the Republic of the United States, regarded as a model for imitation, ceased, by its own act, to be a govern-

ment of *consent*, as in two famous charters, and in the constitution which created it, it had been, with exultation, proclaimed to be, and, under the control of Abraham Lincoln and the Republican party, became a government of *force*, according to the American classification, as much as the sternest military monarchy in king-governed Asia.

Political liberty, once the heritage of the humblest citizen, and of the smallest commonwealth, became henceforth, in that expanding circle of freedom, a permitted privilege. But such was not the language of 1776, when the new code of political rights was conceived and published amid the thunders of a revolution. Here are the words of a charter, venerable for its age and respectable for its authority, and the first in the order of time: "The right of a majority of the community to reform, alter, or abolish government is indisputable, indefeasible, and inalienable."¹ This glorious truth, as it was asserted to be by the men who promulgated it, which was to have increased the dignity and secured the rights of human nature, then became a fiction of law, a thing of no substance or profit. Sophists have sought to nullify the import of that maxim of politics by confining its application to the Federal community, and thus would relegate the states, the parties to the Union, to the obscure and unhonoured condition of counties, having no independent life-principle.² But what says John Adams of Massachusetts, who laid the first stone of independence, as to the springs of sovereignty in the American confederated system of government? Are they found

¹ Swift, with his accustomed energy of expression, had announced, in 1724, the substance of that familiar principle. "Government," he said, "without the consent of the governed, is the very definition of tyranny" (Swift's "Letters of a Dublin Tradesman")—a truth which vibrates in every heart.

² Such was Mr. Lincoln's constitutional theory, according to his speeches as reported in the newspapers.

among the State or the Federal powers? He says: "*Thirteen governments thus founded on the natural authority of the people alone, without the pretense of miracle or mystery, are a great point gained in favour of the rights of mankind.*" When American history is summoned from its seclusion and interrogated before the judgment-seat, such, too, is not her testimony. She sustains to the full the evidence of Mr. Adams. The proper meaning, moreover, of that language is known by the party who used it, and the occasion on which it was employed.

This thing was not done in a corner. The colony of Virginia, an empire in the gristle, self-sustained and heroic even in her error, had seceded from the British association of states, the model on which the American association was formed, as Madison distinctly tells us, whilst every other state remained a colony, bound in allegiance to the throne of King George III. This British province, which had been the beneficiary of every largesse and indulgence of the Crown speaking by a revolutionary junto which had seized the reins of government, declared itself to be a sovereign state from the colonial capital at Williamsburg out to her far-stretching and savage borders, formed an independent republic, and prefixed to its written constitution a Bill of Rights, from which the quoted language is extracted, which justified that revolution in government on the ground of a natural and inalienable right existing in the colony of Virginia, and all other political bodies, so to act. This right of political revolution, the indispensable condition of the sovereign right of self-government by the people, is then an organic principle of American freedom, as understood and maintained by Virginia in 1776,—the first to announce and the first to act upon that new political philosophy. It was in Virginia, then, that secession, as a political right, was first asserted. Countenanced, strengthened, and inspired by that example, the Con-

tinental Congress accepted and ratified that primary principle of state rights, and published it to the nations, as the foundation on which their new nationality was reared—the right of secession.

The record lies open before me. It will last until the rocks disintegrate, and the hills become valleys, and stand as a testimony against the employment of the Federal sword of coercion. The Declaration of Independence was promulgated July 4, 1776, confirming, enforcing, and enlarging the truths previously announced and acted upon by Virginia. That celebrated charter of popular rights declares: "We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, when any government becomes destructive of these ends, it is the right of the people to alter or abolish it, and institute a new government, laying its foundation in such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness."

Thus, inherent political liberty is derived by the founders of the American Republic from inherent personal liberty, for natural liberty they thought of no value unless it followed the individual into a state of society. Outside of society it was only the liberty of the wild beast. That, in speculation, was the origin to which they traced the right of self-government in society. Not until the individual entered the social state, and his natural liberty was acknowledged and protected by law, did it become a possession of value. When Virginia accepted the first Federal constitution, and later, the second Federal constitution, both acts were done by her with her Bill of Rights in her right hand, construing, defining, limiting them. Nor did she

imagine that she surrendered her own liberty of action by entering, voluntarily, a liberty system with the other states, founded on the same natural base of freedom with that on which her own was made to stand. That was a superaddition left to Abraham Lincoln and the Republican party. When, in 1861, moved by her sovereign pleasure, but acting in accordance with her old principles and traditions, she threw off a grievous Federal yoke, she found an American President, whose power was but the rank and unhealthy growth of those principles, as prompt to stifle them with force as King George had been, who denied the school of politics out of which they sprang, nor in petition, nor remonstrance, had ever heard of those extravagant pretensions of his American subjects.

Mr. Lincoln, by his armed powers, produced far greater results than the loss of independence by the Southern States; for he destroyed the head-spring from which had been derived the right, which the majority claimed, to govern the state—a matrix which had fed and sustained all the liberty systems in the Western world. For whence came to the majority that inbred and indefeasible prerogative? Not assuredly from the superior knowledge or wisdom of the majority; nor from their superior strength or wealth. There is no such presumption in reason! Indeed, inquiry might show that each of these titles to govern resided with the minority—superior wisdom, superior knowledge, superior wealth, superior strength. It is evident the only authority for that theorem of politics was the assertions of those charters of popular rights which the late General Grant overthrew with his myrmidons. If, at this day, the majority governs anywhere, within the extended limits of political society, it is by the reverence which men pay to positive law. The moral ground has been broken up and swept away. Change the law and the right is

changed with the law. The party of "moral ideas," as the Republican party arrogantly and insolently call themselves, has remitted society, in every land, to the government of force, and we stand now, in this advanced era, where Cæsar and Genseric stood. The gay and novel theories of Jefferson of Monticello, and of Mason of Gunston Hall, upon which empires have been founded in the Occident, have flitted into air, they have dispersed with the light vapours of the morning. The idolized chief of a Republic stabbed liberty to the heart, and the august victim expired on altars raised to her own deification. Under the inauspicious reign of the Republican party, a revolution, silent, powerful, inevitable, occurred in the Federal States—a revolution of opinion, a revolution of ideas and principles. The maxims of the conscript fathers are dead. Sword-law usurped the throne of the constitution, and with confiscation and murder as its banner, became the foundation of a new order in the Union. This then, cast forth from the flaming crater of war, is one result in the experiment in free government which its partisans in other countries would do well to consider before they upheave the social fabric at home to rebuild it on that new treacherous base. Let them awake from dream and illusion. It were wiser to be instructed by the calamities of their neighbours, than by their own bitter misfortunes. The deity of the Republic,—its presiding and informing spirit,—is no longer the bountiful and amiable god of consent, whose altars and temples, once crowned with free-will offerings, have been dishonoured and thrown down by a Federal soldiery.

Aforetime, a class of speculative reasoners, whose habitat was Virginia, sought to establish a distinction between the right of revolution, which they did not deny, and the right of secession, which they did deny. This was before constitutional problems were decided by the edge of the sword; it was previous to the era of Abraham Lincoln and the Republican party. It

was the epoch of the dreamer and the theorist. The distinction sought to be drawn by those metaphysicians, was ideal; secession, in truth, being but revolution applied to associated communities. It is a particular kind of revolution. Those who obeyed the ferula of Calhoun, and the disciples of Webster, differed on the right of secession, as they differed in all other political things. The former extracted the right from a peculiar source. They held that the powers of the Federal Government, because delegated and enumerated, were trust powers, and might be resumed in virtue of an indestructible sovereignty remaining in the states among the mass of ungranted powers. But it was an obvious objection to that doctrine that it made the right to spring from the retention, by each state, of the sovereign principle. The other school denied this reserved sovereignty, contending that the sovereign right had passed to the Government of the Union by virtue of a ratification of the Constitution of 1787, by the people in their conventions, leaving in the states no greater independent political life than was to be found in the city government of Boston or Richmond. The fathers were better logicians, or, at least, they constructed a more consistent theory, when they asserted that the right of secession by an existing body politic was in virtue of an inherent and inalienable right, whether the seceding community claimed to be sovereign or not. But, by whatever name called, or by whatever school advocated or taught, the doctrine was but a phantom, a cobweb of the brain, a delusion and snare, and of no more practical utility than the controversies of the schoolmen, as Virginia, the old seceder, and South Carolina, the whilom nullifier, discovered, as soon as they attempted to employ the asserted right.

The resort to compulsion, to preserve a federal body, was defended on the ground that, by the ratification of the constitution, the states surrendered the

right to withdraw from the Union. That had been Webster's inherited creed, and, in the field of argument, was the position held by the coercion party of the North and a handful of obsequious followers in the South. But that conclusion, with any show of truth, could not be derived from an adoption of the constitution, unless some prohibition of secession was contained in that instrument, such as there had been in the former constitution of the United States; or unless, as a result of ratification, a fusion of the states into one social body had been produced. Neither proposition had the slightest colour of truth as a fact, and therefore the natural, and, as Virginia asserted, "inalienable," right of secession from a federal association continued unimpaired, whenever, in the opinion of any state, the federation ceased to afford the advantages for which it was formed or entered. It is a fact, undisputed at the North, or anywhere, that each state retained its autonomy more fully after the second constitution had been accepted, than when, as a British colony, it had withdrawn from the Empire, and there is no word, no clause, no just inference, to be derived from that authority of government by which the right of renunciation of its federal connections by a state is surrendered, barred, or limited. A voluntary secession from a federal body is the correlative of a voluntary accession to it, unless the privilege is surrendered, and even then the Virginia Bill of Rights, sustained by the Declaration of Independence, affirms that it cannot be lost, because it is inalienable. It is a right which springs from and attaches to that system of government. The history of the period that gave birth to the constitution, in language too emphatic to be misunderstood, informs us that, if an interdict of secession had been introduced into the constitution, so great was the difficulty of getting it accepted by the necessary complement of states on any terms, no one of them would have

embarked in that second experiment, would have entered into those dark, tortuous, treacherous Federal toils, so grounded were the people of every state in the principles of the revolution, then fresh and verdant in every mind and heart.

The history of the United States informs everyone that the constitution of 1787 was not the first constitution of the Union, there having been, among the states, a previous federal bond. The intelligent and acute reader, attaching a just value to precedent, as a measure or test of right, at once inquires, On what terms were the states disengaged from the Union, which the first constitution formed, to enable them to construct another Union? The question is pertinent to the inquiry, indeed it cuts into its very core. The fathers, who made the second constitution, and who had seceded from the British Union, have spoken and acted on the question, and their words and acts are decisive of the right of secession, as a constitutional franchise. The constitution of the first federation declared the Union, which it negotiated, to be perpetual among those sovereign states, and that no part of that organic law should be changed without the concurrence of every state. The thirteenth article speaks in these words : "The articles of this confederation shall be inviolably observed by every state, and the Union shall be perpetual ; nor shall any alteration in any time hereafter be made in any of them unless such alteration be agreed to by a congress of the United States, and be afterwards confirmed by the legislatures of every state." It would be inferred from this obligatory language that here was interposed an impassable barrier to the secession of any state, except by agreement of parties. But the fathers, with General Washington at their head, adopted a course effectual, and final, to disembarass the states from that inconvenient covenant, and in entire conformity with the nature of federal bodies as

understood and practised in America. Disdaining a limitation, sought to be imposed on an inalienable and indefeasible right, the states, one after another, withdrew from the old Union to enter a new Union, which another constitution proposed to form.

With the example of 1776 before him, no American ought to ask by what authority that act was done, for it was done in virtue of a right superior to that constitution and to all federal constitutions—the right of secession inherent in every body politic, and indistructible. Standing before us, then, we have the authority of the fathers for it,—their second exercise, as we see, of the right of secession. The argument is rendered more imperative and conclusive by the sanction which the second Federal constitution, in words, gives to the right of secession. The seventh and final article of that celebrated instrument provides for its own adoption through a series of secessions, and thus recognizes secession as the vitalizing power of the second and more perfect Union, as it had been of the first Union. The seventh article is in these emphatic words: “The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.” This was not a desertion by consent of a rotten ship on the high seas—an abandonment to the winds and waves of an unseaworthy craft—for there were thirteen states in the Union which makes an adoption of another government, by nine states, secession from an existing and continuing federal body politic, whose constitution forbade the act.

We find, therefore, that the right of secession is a birth-mark graven on the constitution by the creating power, graven on that constitution under which Mr. Lincoln levied war on the states of the South section because of their secession from the Union. Each state of the confederation, exercising an inherent and

inalienable right, according to the American doctrine of liberty, and actuated by its own determinate will, dropped out of an old Union and adhered to a new Union, acceding and seceding by the same act. Rhode Island and North Carolina stood by the old constitution, with its prohibitory thirteenth article, protesting against the infidelity of the other states to their Federal engagement. But remonstrance was treated with contemptuous silence, and Virginia, the ninth state, as was supposed, under the leadership of her governor, stimulated and abetted by the perplexed and double politics of James Madison, and secretly but effectively encouraged by Washington, retreated from the Union, and formed, with other seceding states, a new Federal compact, as, at a later period, she did with the other commonwealths of the South, but with far different results. The acts were similar, the right the same. The parties also were the same, except that the great West, the land of the buffalo and the elk, a savage realm, had become the abode of civilization, and, divided into states, had been admitted into the Union, as also had been the states of the cotton zone, redeemed also from the wilderness and the Indian savage. The first secession, sanctioned by opinion and sustained by physical power, was prosperous in the event, and the muses of history and poetry have united their songs to celebrate it as the grandest epoch in constitutional government. The later secession of 1861, not so sustained and sanctioned, met with another fate. It was stigmatized as rebellion against the constitution, with its indelible birth-mark upon it, by North section, which seized the common government, with its treasures, its public credit, its army, its navy, its prestige, and its foreign connections. The seceding states, become the Confederate States, a blazing meteor of fire, were visited with all the horrors of war. After they had been invaded and conquered, as only Attila invaded and

conquered, those once sovereign states, by force of a Federal edict, were reduced to military districts, beginning with Virginia as District No. 1, with military satraps set over them, in imitation of Cromwell's Major-Generals, among whom, for the purposes of government, had been distributed the soil of subjugated England, the significant result of that commonwealth. That was a cruel mockery, by his Federal countrymen, of a hero of two secessions then sleeping so gloriously at Mount Vernon, still the resort of the pilgrims of liberty, who come with staff and sandal shoon. It is then a truth in American history, that the constitution, under which Lincoln coerced the South, did not prohibit secession by implication, or word, but in express language recognized it, and to it owed life as much as the cold and inert Adam owed life to the breath of the Deity.

If we claim for the right of secession the authority of the Declaration of Independence, which asserts "consent" to be the only legitimate beginning of government, it will occur to the inquisitive reader to inquire whether the word, as used by the Fathers, implies consent in the outset of government, or requires it to accompany the government through all its stages and progressions, authorizing and sustaining it as a life force. If we look at the purpose of the principle, it appears that the two kinds of consent are but parts of the same asserted proposition. The sense in which words ought to be received is that which attached to them when they were used in the particular cases. What application was made of the language by the men who formulated the maxim of government? We know that it was for the want of the continuing consent of the colonies of the British kingdom that the imperial authority was attacked. The legality of its origin was undisputed. Outside of New England, prior to the passage of the Stamp Act, the beginning of those evil days, the American colonies—it was es-

pecially true of Virginia¹—had been distinguished for enthusiastic attachment to the British throne. But, on account of injurious legislation, as it was asserted, the consent of the colonial population had been withdrawn from the political connection. This was the sense—a withdrawn consent—in which the word in the United States was first used. Therefore bonds with the Empire were severed, and other bonds, with their consent, were contracted among the states, first in 1776, and again in 1787. Here we have the word employed in both senses by the actors who introduced it in the vocabulary of politics. The United States overarch a continent. That imposing edifice of political authority, until the war of the sections, reposed on the recognized principal of “consent.” A restored Union put the government on the new bottom of successful war. We attain then this result and definition of American liberty after the centennial era has passed ; self-government in America is the government of the South, *against its consent*, by the North, under the penalty of fire and sword. That now is American liberty. There is a fact in the history of Federalism which greatly strengthens the argument in favour of the right of secession, which, in justice to historic truth, ought not to be omitted on this page. By the eighth article of the constitution of the Confederation, all Federal expenses are directed to be defrayed out of a treasury to be supplied by contributions from the states, according to a proportion which the article furnishes. The states were dilatory in obeying this injunction. New Hampshire, a rib taken from the side of Massachusetts, never paid anything. During the entire period of the Confederation that state was but an ornamental and honorary member of the society of states. No amount of dunning and begging could induce the states to contribute their quotas of revenue

¹ See Edmund Randolph's speeches in the Virginia Convention of 1788.

with regularity and fulness, and the financial credit of the Union reached the lowest stage of depression. There could not have been a more unhappy condition for a collection of American politicians—no money and no credit! Whilst things were in this distressful state, Hamilton and Madison, prolific in schemes of reform, but, in that case, speaking for others as well as for themselves, submitted to Congress a plan which, if it was adopted into the constitution, would empower that body to issue, against the trade of a state, letters of marque for the arrearages of its Federal taxes. From the spoils of commerce the deficiency of taxation was to be made good. But the medicine was thought to be too potent for the constitution of the patient, so the poisonous insect never took wing. Congress was persuaded that the scheme provided for a civil war, which, if successful, would destroy a government of consent. The fathers then, moving on the line of the Federal principle, and sticking to that plane, thus acted: coercion they would not allow; secession they would not forbid.

This by no means discloses the strength of the combination which had been formed to arm the central government with this proposed power, so fatal to the system as a voluntary government. It is by far the most interesting feature in the political history of the United States, and will be recorded here. Nowhere else, in our time, or until it has become a dead historical fact, will it find expression on the page of American history. Since the war of coercion, begun by the Republican party in 1861, Northern writers, to conceal the wicked and unconstitutional nature of coercion, with carnage and conflagration in its train, are accomplices in the suppression of the truth in relation to it, whilst Southern biographers are so partial to the heroes they applaud that they effect the same object. But this writer has no section or party to shield, and no hero to extol. The first movement was made in

the legislature of Virginia by the partisans of that excessive Federal jurisdiction, but it received no encouragement in that fortress and asylum of states rights.¹ We hear of it next in an unsigned and undated letter, in the handwriting of Joseph Jones of Virginia, addressed to Pendleton, Wythe, and Jefferson, and found among the papers of Jones, addressed to him by Madison, and by him endorsed "probably written by General Washington" (Madison Papers). If we judge the authorship by the contents of the paper, there can be little doubt that Madison's conjecture was correct. It appears to have been written immediately after the Confederation was adopted by Maryland, the final state, and attempts by argument to prove that the right of the Congress of the Confederation to coerce a state into compliance with its Federal obligations, was to be found among the constructive powers of the government. But at that early date, before Northern opinion had been moulded in a suitable form, those partisans of coercion dared not go so far, that achievement in sword-logic being left to the president of a Republican party, with its moral ideas, coming a century later.

The compulsion party had increased in the army, where Washington's influence was greatest, and the necessity severest felt, and also in the Federal nation; for, as we have seen, it reared its formidable crest in Congress in the spring of 1781. The proposition of Hamilton and Madison was referred to a special committee, which reported favourably, and went to the extent of extending the power asked for, and embracing in their report the form of the constitutional amendment which they recommended for adoption by Congress and the states. I copy it, as found in the report of the committee, to serve as a verification of

¹ It is remarkable that Jefferson should have advocated that amendment. (Lee's "Remarks on Jefferson.") But Jefferson was a politician.

the fact, as well as an expression of the terms in which its partisans proposed to the states to make that enormous concession of power to Congress—to make a surrender of all states rights in a single act. The reader will then know that the power to use force against a state by a Federal Congress was solicited, but was peremptorily and finally refused by the Congress of the Confederation as destructive of a union of consenting states. We will also learn that the proposition was renewed in the convention which framed the constitution from which President Lincoln derived his sword-law, and that the power was again peremptorily, and finally, but not effectively, refused. The report of the committee to whom Hamilton's proposition was referred speaks in this language : “Whereas, it is further declared, by the thirteenth article of the Confederation, that no addition shall be made to the articles thereof, unless the same shall be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every state: the United States in Congress assembled, having seriously and maturely deliberated on these considerations, and being desirous, as far as possible, to cement and invigorate the Federal union, that it may be established on the most immutable basis, and be the more effectual for securing the immediate object of it, do hereby agree and recommend to the legislatures of every state to confirm and to authorize their delegates in Congress to subscribe the following clause as an additional article to the thirteen articles of confederation and perpetual union. ‘It is understood and hereby declared, that in case any one or more of the Confederate States shall refuse or neglect to abide by the determinations of the United States in Congress assembled, and to observe all the Articles of Confederation as required by the thirteenth article, the said United States in Congress assembled are fully authorized to employ the force of the United States, as well by sea as by land, to com-

pel such state or states to fulfil their Federal engagements ; and particularly to make distraint on any of the effects, vessels, and merchandises of said state or states, or any of the citizens thereof, as with any foreign state, as well by land as by sea, until full compensation or compliance be obtained with respect to all requisitions made by the United States in Congress assembled, in pursuance of the Articles of Confederation. And it is further understood, and is hereby agreed, that this article shall be binding on all the states not actually in possession of the enemy, as soon as the same shall be acceded to and duly ratified by each state.' ”

In the history of the proposition for coercion we come to the convention of 1787, and find there an act of that body which clinches the conclusion that the framers of the American Federal plan designed to give to the Federal government no compulsory power over a state. As soon as rules for the government of the convention were adopted, as we learn from the Madison Debates, Governor Edmund Randolph of Virginia opened the main business : “ He expresses his regret that it should fall to him rather than to those of longer standing in life, and political experience, to open the great subject of their mission. But the convention had originated in Virginia, and his colleagues supposed that some proposition was expected from them, and had imposed that task upon him. He then commented upon the difficulty of the crisis and the difficulty of preventing the fulfilment of the prophecy of American downfall.” He then proceeded to submit a plan for a Federal government which he had prepared as a substitute for the Articles of Confederation. It was accepted as a proposition on which to begin work, and the convention referred it to a committee of the whole house, where it was considered. The present body of the constitution is Governor Randolph's proposition, but altered so as to accommodate

the opinions of the convention. If any one deserves the appellation of father of the constitution, he is Edmund Randolph. The last clause of the sixth article of his proposed government was in these significant words: "That the national legislature ought to be empowered to call forth the force of the Union on a state failing to fulfil its duty under the articles thereof." In comprehensive brevity the language authorized force to be used on the states, and destroyed the voluntary feature of the Union. It was rejected from the Federal plan by the convention, sitting in committee of the whole, and we hear no more of coercion in its proceedings. No man spoke for it; no man voted for it; though Hamilton, the coercionist, was on the floor, and Washington, the coercionist, was in the chair as president, but voting as a member. It appeared, too, that the ductile Madison also had seen a new light since he proposed to equip a Federal fleet and send a Federal army to collect taxes from a laggard state, and since his letter to Jefferson of April 16th, 1781, enclosing the committee's report to Congress, recommending that measure as an additional power to be conferred on the Federal government. He opposed Randolph's proposal with this conclusive argument: "The more he reflected on the use of force the more he doubted the practicability, the justice, and the efficacy of it, when applied to the people collectively and not individually. A union of the states containing such an ingredient seemed to provide for its own destruction. The use of force against the state would look more like a declaration of war than an infliction of punishment, and would probably be considered by the party attacked as a dissolution of all previous contracts by which it might be bound."

Upon scrutinizing its provisions we discover in the constitution no authority for Congress, or the president, to levy war on a state, because the convention, upon

matuarest consideration, refused to confer upon either or both that dangerous power. To render the refusal more significant, and more obligatory, the constitution contains this further provision, put there to guard the states from the perilous constructive power in this as well as in other cases: "The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people."

It having been shown that those statesmen refused to place the right to coerce a state among the granted powers of the constitution, it cannot be contended, with any show of reason, that it was the intention to leave it among the incidental, or constructive, powers of the system. The clause just cited from the constitution, as well as the reason of every man, rejects such a conclusion as absurd. But there is a fact that settles the argument, against such a construction of the constitution, derived from the committee's report to the Congress of the Federation before alluded to. When the committee submitted its report, it contained in the preamble an argument that the solicited power already existed among the implied functions of the government. We ask why the committee, if thus persuaded, did not recommend to the Congress to employ that latent authority? Why, then, press the amendment on Congress and the states? The committee did not stand alone in the opinion that a power of compelling a state existed among the implied powers of the Confederation. We know that Washington was of that opinion, as well as Hamilton, Madison, and other great men of the country. Nevertheless, all united in the effort to have the constitution amended by the insertion in it of a positive grant of the power. The reason, which was given in the committee's report, condemns President Lincoln and the Republican party, who derived the power of compulsion from the implied powers, in the most distinct and vehement manner.

The preamble says: "It is most consonant to the spirit of a free constitution that, on one hand, all exercise of power should be explicitly and precisely warranted; and, on the other, that penal consequences of a violation of duty should be clearly promulged and understood." That obviously is the correct theory of written governments; and, when a power so capital in its nature is not to be found among such as are expressly granted, it is a necessary conclusion that it was regarded as one of so dangerous a character as not safely to be trusted to the government of the Union. It is an abuse of reason and logic to derive by inference, from a written constitution, a power which the convention which formed it refused to confer upon the government. Notwithstanding all these barriers, and even an interdict by an oppressed and voiceless constitution, President Lincoln, in a war of coercion, ravaged, in the South section of the Union, an immense area of civilization, population, and wealth, and by his executive decree emancipated the entire serf population. That act he justified, not by the constitution, but by the illimitable war power. Constitutional government may be defined as one in which the balanced forces of the constitution direct the action of the government. Judged by the terms of this definition, the Republic of the United States does not belong to the class of constitutional governments, but to that other description in which government is dominated by an arbitrary will, backed by an irresistible force. Methinks I hear the man of affairs in Europe, who values government for its practical advantages, inquire: "What then is the worth of the written constitution, stuck over with oaths, the characteristic of the modern republic?" The experience of America sadly answers: "Nothing! As a security for right, or a shield against wrong, it is utterly valueless. It is a fiddle on which the politician plays any tune; it is a cobweb which confines

only the weak ; it is a quicksand which finally engulfs a nation."

We will now contemplate the right of secession in a more amiable light, as a force to preserve, by its presence and silent influence, a written constitution. In that primordial right there was a deep philosophy, as the American fathers employed and understood it. More assuredly than all the checks and covenants of a constitution, contained in books and expounded by courts, would the acknowledged liberty of secession engender moderation in the exercise of power. That natural prerogative of states, when they are joined in a federal body, would forge links of gold between them. The Union would be a consenting system based on mutual advantage. Such a sovereign discretion would operate like gravitation in the universe of matter, and would draw all hearts together. Under the sway of that sceptre Congress, and the other departments of the government taking their hue from Congress, would become a government of the concurrent majority,—the only form of the majority power that does not militate against a government of consent. Under that mild sway the enactment, the execution, and the judgment of laws become subjects of compromise, and compromise is consent. Some philosophers have supposed electricity to be the power which fixes the sidereal universe, and binds the planets in their courses ; and the unfettered right of secession was a political electricity which the fathers of the Republic introduced into it to give the Union anchor, and harmonize the action of the Federal planets. That was the god, the beneficent power, which they left to watch over the constitution, and be always with it. But the Republican party, the patron of sectionalism and violence, not comprehending the purpose of a confederation of states, or despising the principle which it represented, with vandal hands destroyed it. Not till then did the genius of the constitution take its flight ; not till then

did liberty, with downcast visage and weeping eyes, bid adieu to America.

With deference to the name of Webster, but with an assured confidence, it is asserted here that the principle of a Union of consenting states was not understood by that greatest statesman and orator of the North, at least, was not announced by him from his place in the senate or in any publication known to me. The great deputy of a mercenary and aggressive majority was in a false position throughout his extended and glorious career in Congress. This explanation is due to his memory. His people used the strength of the giant that they might receive the pecuniary results of his labour, as though he had delved for the all-worshiped ore. But there was a higher purpose to which the genius of Daniel Webster should have been applied to discover and develop the unwritten philosophy of the Federal system, designed for the protection of minorities, on which its grandeur and permanence depended. He should have been the colleague, not the opponent, of Calhoun; but nature, averse from prodigies, would not be thus prodigal of her gifts to South Carolina. When Daniel Webster left the roof-tree of his Puritan ancestors, amid the hills of New Hampshire, to seek his fortune in the great world beyond, he hesitated whether he would not make Virginia his home, as Prentiss afterwards was drawn to the banks of the Mississippi. Virginia would have employed her adopted son, not as Massachusetts used him, in devising and defending systems of plunder legislation, to be forced on unprotected minorities, but, without doubt, in developing the fundamental idea of a system of confederated states, giving him an indefeasible title to the coveted name of "expounder of the constitution." As senator from Virginia he would have educated the nation in the opinion that secession was a salutary principle in a voluntary community like the American Union. The

South might have been compelled to retire from the Union, but a tribunitian power as a guarantee would have been inserted in the constitution, and the story of old Rome been repeated in the distant West. The error of Calhoun's constitutional philosophy was, whilst he tortured nullification into a remedy for exorbitant uses of Federal power, he would not accept secession as a mode of redress, inherent in the nature of the Federal structure, efficacious, and justified by the precedents of the country.

If the Federal Association had fulfilled the purpose avowed by its contrivers, of conferring on the states advantages to be enjoyed in no other way, it would have been wiser than an interdict of secession to have moved in a contrary direction, and provided for the expulsion of disobedient and troublesome states, like the Puritan commonwealths, in imitation of the policy of that early compact which held in defensive league the colonies of New England against the hostile Indian nations on their borders and the Dutch of New York. Rhode Island had not been allowed to unite with the pious sisterhood. Its inhabitants had held an erroneous tenet in religion with reference to the covenant of grace and the covenant of works. The dispute had arisen in Massachusetts. The heretics had been expelled from the congregation of orthodox believers, but, under the banner of Mrs. Hutchinson, had braved a savage wilderness and found religious freedom in an island of Narragansett Bay. The odium of the theological error clung to the seceders, and rendered them unworthy of political fellowship with the godly inhabitants of Massachusetts, New Hampshire, and Connecticut.

Want of revenue produced the movement for Federal reform, which, gathering volume, resulted in the constitution of 1787. The Congress of the Confederation, encompassed by financial troubles, recommended to the states to amend the articles so as to empower the

government to collect a five per cent. *ad valorem* duty on the import trade. The thirteenth state withholding its assent, the amendment failed of adoption. A dissolution of the Federal body was imminent, and Congress, by painful experience, realized the truth of Burke's aphorism, that "the revenue is the state." It had become obvious to certain of the leaders of opinion that if the constitution was to be strengthened by the addition of further powers, it would be necessary to devise some other mode of compassing that object than the concurrence of all the states in the mode directed by the Articles of Union. We have learned that, in that condition of perplexity, state secession, after a new constitution had been made, was resorted to as a mode speedy and effectual to compass that object. This event in American history very strikingly displays the fact, that, in certain conjunctions of necessity, secession is the only mode of preservation offered to a federal body,—a fact that ought to be impressed now on the American mind. In 1861 a crisis again occurred in the United States, as it might occur at any time when it was necessary to overhaul the ship of state, and make certain repairs in it, to avoid a disruption or overthrow of the Union. Under the mask of popular suffrage, which was called by the fine name of "liberty," the Federal government had become an oppressive despotism of sections, the product of an unskilful organism. Through all the organs of sensation the section of the South experienced the insulting and injurious serfdom to which it had been reduced under a government which had been acceded to by their ancestors searching for the liberty of the Republic.)

The written constitution, having the seal of Washington attached, with its covenants, its sanctions, and its guarantees, even from the day of its installation, had been made to accept any construction demanded by the love of dominion, greed, or fanaticism of a

sectional majority, residing in the North, which dominated in Congress, in the electoral college, and was felt in the decrees of the courts. It was an influence that, like the upas tree, overshadowed the Union. The property of the Southern people, by the overt and visible agency of congressional enactments, was taken from them in large masses and distributed among favoured industries in the West and North, whilst their labour system, warranted by the constitution, as constructed by the courts,¹ was openly threatened with destruction, although it was the corner-stone of Southern civilization, and was interwoven, in every part, with the huge body of its industry. Never in the history of mankind had been constructed so subtle, so gigantic, and so exhausting a tribute. It was as unmitigated a state of slavery as one community could create over another. They did not send a Verres to South Carolina to oppress and destroy the people, but they sent custom-house officers more exacting than Verres. The Federal soldier alone was wanting to complete the picture of servitude, and he was supplied amid the flames of Columbia.

There was but one mode, in conformity with the constitution, by which the grievance could be redressed, and that was to introduce, as a provision in the constitution, an article which would place the means of self-protection in the hands of the oppressed and depleted minority. After wandering in the mists, discussing temporary or partial remedies, Southern opinion at last fully, strongly, and definitely occupied that ground.

From that period "equality in the Union," which the South claimed as a right, meant equality of power,—right coupled with the means of enforcing or protecting it. After the nullification period closed, Honourable

¹ The Dred Scott decision.

John C. Calhoun, "worthy to be a senator of Rome when Rome survived," as Webster finely said of him, had been engaged in educating the intelligence of South section in that opinion. Nowhere has the reason of the self-protecting principle in government been so fully and so ably discussed as in the multiplied productions of his great intellect. Disciples enlisted under the renowned master, and followed him into that field of discovery and thought, as scholars followed Plato the divine in the groves of Academe, or Aristotle in his walks by the Illissus, and among them this writer, who published, a year previous to the battle of Manassas, a volume to prove that, according to the design of the constitution, an "equilibrium of sections" had been devised, but that it had been circumvented by the sinister action of Congress. It was the cherished hope of the discoverer of that constitutional theory, that such an organic change, as was implied by the restoration of that constitutional base, would commend itself to public favour in the Union, and that a restoration of "the Lost Principle" of the government would be accepted in lieu of a Southern Republic.¹ But speeches, even from a Calhoun, proved to be empty breath, and essays, pamphlets, books, from other sources, emptier still in producing in the dominating section an inclination toward justice and constitutional compromise. The equilibrium would have been a deliverer

¹ The first fruits of the leisure of a planter's life was "the Lost Principle of the Federal government." Examination of the Madisonian Debates had satisfied me that the states were not the substantial parties to the Union, but subordinate divisions of two sections, which had formed the compact of government, based on a projected balance of power. That was the theory which I had worked out of the constitution, as explained by the Debates of Madison. When I stated it to the Hon. Robert Eden Scott, who lived at Oakwood, the paternal home, an adjoining plantation, he attacked it with the combined forces of ridicule and argument, which induced me, nothing daunted by the criticism, to enlarge my second part to combat his objections. But when the volume

to South section, and the North section was in no mood to enfranchise the sweating giant and lose the monopoly of his labour.

Without the consent of the controlling part of the Federal empire nothing could be effected in that direction, for the constitution provides that : "Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to the constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments which shall be valid to all intents and purposes as parts of the constitution when ratified by the legislatures of three-fourths thereof, as one or the other mode of ratification may be proposed by Congress." This placed the redress of the grievance beyond the flight of hope. As well, for the purposes of the South, have left Federal amendment where the Confederation had placed it. This precaution appears to have been inserted in the instrument for the protection of the minority, but the Fathers did not remember that, with the unlimited power of construction always at hand, the majority has no occasion to enlarge the powers of the constitution by new grants. But, whilst amendment was rendered thus difficult, the framers of the Federal polity in no wise forgot that they had left with an aggrieved state, or oppressed minority, the primordial and indefeasible right of secession, and that it was the ultimate ground on which that constitution stood with its unreasonable fifth article.

which I had written was published, he read it twice very carefully and, with habitual candour, accepted the new doctrine as the correct theory of the general government. During four years, in solitude and in the shadow of a great mountain, I laboured at my idea, and his acceptance of it rewarded me for all my toil ; and I was gratified when he informed me that he had used it in his conference with Secretary Seward. So the pressure of an idea had converted a planter into an author.

The Southern leaders followed the example of their ancestors. They tried the mode of redress in 1861 which in 1787-8 had succeeded so perfectly. The object of the secession movement was to procure an amended constitution. I know the fact. After the river of secession had been crossed, measures of compromise and reunion would have been proposed to the North by the seceding powers, but for its haughty and forbidding attitude. Rejected proposals would have led to demoralization in the Southern ranks, so the leaders in secession reasoned, and an independent government endangered the measure resolved on by those leaders, if the constitution could not be amended, as better than an ignoble and exhausting bondage to the merchants, manufacturers, and shippers of the North, become a monied aristocracy, who by protective and prohibitory systems had made the continent a barred prison to South section. Every man who embarked in that adventure felt the real state of subjection into which every Southern commonwealth had been brought, and that the South section, appaereled with freedom, was but as a victim conducted to the sacrifice, adorned with garlands, and accompanied with the music of timbrels and harps.¹

¹ See the later writings and speeches of Calhoun *passim*, but particularly his speeches in the Senate on the slavery question, March 4, 1850, and his reply the next day to Senator Foote of Mississippi, so undaunted a champion of the Union. In the former he said: "The North has acquired a decided ascendancy over every department of this government, and through it a control over all the powers of the system. A single section of the government, by the will of the numerical majority, has now in fact the control of the government and the entire powers of the system. What was once a constitutional Federal Republic, is now converted in reality into one as absolute as any autocrat, and as despotic in its tendency as any absolute government that ever existed in the latter. Could I have overlooked the cause, which is so obviously to be traced to the utter inability of the Southern States to defend themselves through Congress upon this or any other subject upon which the Northern States choose to act?"

CHAPTER III.



WILL now introduce into the domain of history an important fact which belongs to the subject and to the era of which I am writing, and to the acquaintance of the foreign reader a man whom great talents and integrity, with singular firmness and boldness of character, qualified for the highest employments of state. A noble figure and a countenance filled with light, indicated the greatness of his mind and character. In 1861 Honourable Robert Eden Scott was an eminent lawyer of Virginia, and an opulent slave-holder and extensive planter of Fauquier county. He had shunned Federal life, and, for many consecutive years had represented the voters of the county with distinguished reputation in the legislature of the State, and in 1850 had been one of two delegates to a convention charged with the responsible duty of amending the constitution of the State of Virginia. In politics, with a strong and an undeviating step, he had trode the path of Whigism, and had opposed with warmth the Democratic party in its endeavour to obtain a Federal control, because its tendency was, he was persuaded, to excess, latterly to the excess of disunion. When Secession stepped into the arena and sounded a blast on his trumpet, he supported the side of the Union with all his strength and with all the resources of his popularity and influence.

Could that be overlooked? It is the great, the manifest cause. . . . Does the senator think that the South can remain in the Union upon terms of equality without a specific guaranty that she shall enjoy her rights unmolested? . . . No, Mr. President, we cannot disguise the fact that this feeling in the North exists; and unless there be a provision in the constitution to protect us against the consequences, the two sections of this Union will never live in harmony."—*Works of Calhoun*, vol. iv. pp. 551, 574.

In that period of anxiety and terror he spoke, memorably, in Warrenton, the county seat of Fauquier, and depicted in colours, not too dark, what, in the event of a war between the sections, would be the wretched condition of Virginia, to be made a cockpit and the prey of a vile banditti, recruited for the Federal service from the outcast population of Northern cities—a speech which will not be forgotten by any man who heard it. Nevertheless, Mr. Scott had been brought to appreciate the condition to which the Southern Republics had been reduced by an unequal and fraudulent working of the colossal power with its head and fangs at Washington, but embracing the entire slave section in its dreadful coil; yet he could not be persuaded that a Republic, reposing on the ground-work of slavery, would redress the evils complained of, and would not rather plunge the unhappy South in a vortex of irretrievable ruin. Therefore, in the new division of parties which then occurred, he was a warm, a decided, a vehement advocate of the Union, and had been elected by a very large majority of the voters of Fauquier county to the Sovereign convention, to be charged, in that imminent crisis, with the interests of Virginia. His colleague in that great business was Honourable John Quincy Marr, a gentleman of ability and character, captain of the “Warrenton Rifles” in General Beauregard’s army, a brave and accomplished officer, and the first soldier who was killed in the Civil War. Such was the attitude of affairs when there came to Mr. Scott at Oakwood, his country seat, a messenger, sent by the Premier of Mr. Lincoln’s administration, to invite him to a consultation in respect to the public disorders. At once he repaired to the Federal city, hoping that something might be done to restore the Union in its integrity, or, at least, to preserve the public peace. Though the strong bias of Mr. Scott was towards conservatism in government, yet he recognized the fact that the Union had worked

off its centre, and that a balance of political forces, between the angry sections, would have to be produced as the condition of a permanent settlement of the questions which were then convulsing the country. Therefore, when invited by Secretary Seward to give his opinion as to the policy to be adopted by the administration of Mr. Lincoln to recall the detached states, he answered :

"Justice, Mr. Seward, justice ! Do the South justice, and I will engage that every state will return to the Union."

"If justice," responded Mr. Seward, "be all that the South demands, she will assuredly receive that at our hands."

Mr. Scott was a direct man ; he was a matter-of-fact man, and not at all given to the fence of words, so he replied to the Premier :

"The kind and measure of justice which the South now asks from you is not such justice as is found in promises or paper guarantees. We demand a substantial guarantee: an equal power with the Free Soil section in every department of the government—the legislature, the judiciary, the presidential office. The South must have an equal power in the Union as the condition of its restoration."

This brought the conversation to an abrupt termination, for the Secretary said, with emphasis :

"That cannot be. The North will never consent to part with its supremacy in the Union."

The conference between those gentlemen had not been productive of a compromise of views, but it had thrown on the sectional controversy a new and very strong light, and had convinced Mr. Scott that the North, notwithstanding sentimental professions, did not desire the Union except as a means of holding and governing a rich, dependent, and spoliated province. He was satisfied, too, that the claims of the South, if ever conceded, would have to be wrung from

the dominant section by a hand of greater strength than negotiation. With this impression or conviction on his mind, he repaired to the Sovereign convention at Richmond, where that subject was brought directly to his attention, as further on in this narrative we shall see.

The Sovereign convention was in session in Richmond as this writer passed through that capital to Montgomery to take part in the movement for an independent South, if the Southern Confederacy, as then formed, should appear to possess sufficient strength of texture, but stopped long enough to ascertain the complexion of the convention. As soon as I reached the seat of the new government I sought out Honourable Barnwell Rhett, an accomplished statesman and leader in South section, who represented South Carolina in the Confederate Congress, a polite correspondence having been held between us a year before that time. Mr. Rhett introduced me to President Davis, whose unshaken constancy and highest courage, amid all reverses, the world knows so well. I saw him as a hero formed for high exploit, tranquil, intelligent, firm, handing to the young Bellona spear and shield, whilst history stood by with unwritten scroll and her pen of iron. The President inquired of me the news from Virginia, and sought particularly to know what I thought of the composition of the convention. I told him I had attended its sittings long enough to give me a decided opinion upon that subject. "The convention," I said, "is composed of three distinct parties. There are the ultra Union men, a small fraction, who demand that secession be stopped and the seceded states forced back into the Union. As a balance, there is another ultra party, stronger in numbers, but unable to effect any result, which insists upon immediate secession and annexation to the Southern Union, as necessary to the interests, the safety, and the honour of Virginia.

But there is another Union party in that body standing between those antagonists, which holds the majority firmly in its grasp. This intermediate party is sincerely attached to the Union as it was, yet is not deaf to the complaints of the states of the cotton belt. But if there be two Unions formed out of the states, one at the North and one at the South, and Virginia is compelled to choose between them, under the auspices and lead of this middle Union party, she will come South, if necessary, sword in hand. I know some of the leaders of that middle Union party in the convention, and I answer with my life and honour for their loyalty to the South,"—words spoken without a design, but which I suspect bore fruit.

General Joseph R. Anderson, proprietor of the Tredegar Iron Works at Richmond, and later a Brigadier-General of the Confederate Army, a post for which he had been prepared by a West Point education, I found in Montgomery. He had been drawn to that new centre by an engagement with the government, if it should appear to possess sufficient cohesion to be a contracting party, and we occupied the same apartment in the crowded hotel, having been acquainted before. We would consider and compare at night the observations which each had made during the day, and concluded that the government of President Davis would stand. I cannot describe the influx of strangers into the new capital, except to say that all that was most beautiful, graceful, and engaging in those states was to be found there; nor can I name the distinguished characters, military and civil, who had come to Montgomery to give the moral support, to be afforded by their presence, to that recent birth of secession. With that pleasing and forcible argument before our eyes, no doubt could be felt that the Confederacy was established at least in the hearts of the people. The Secretary of War conferred on me a commission in the army of the Confederate States, then but an

ideal creation, but to become, as Thomas Carlyle might say, a considerable entity, though I had been strongly urged by Mr. Rhett to prefer the foreign service of the young Republic. There soon came to me from the Adjutant-General's office an order to report to the Secretary of State for duty.

I found General Toombs in his office. The make of his face and his remarkable dark eyes indicated the force and brilliant character of his genius, so conspicuous wherever he had acted. His name was associated with that of Alexander H. Stevens, the Confederate Vice-president, and subsequently the Governor of Georgia, and in that bright conjunction they have passed into history. There was about the Secretary a warmth and decision of manner as though he rarely hesitated. Addressing me he said: "Captain, we have service for you, but not in the military line. We wish you to go to Richmond and find means to disabuse the convention of the false impression which Union newspapers and talkers are making. They say there is no cohesion here; that, at this moment, we are on the point of dissolution. That is not so. Look around you! Tell them we have left the Union and do not intend to return to it. We wish you to start to-morrow."¹

An intelligence passed between the Secretary and myself, and I requested to be allowed to establish in Richmond a recruiting station for the army. The request was instantly granted though, regularly it ought to have been preferred to the Secretary of War.

The next morning I left for Virginia. For a traveling companion I had General Ben McCullough, then famous in Western life, but afterwards more famous as a brave and skilful commander in the Trans-Mississippi

¹ General Robert Toombs and Honourable Robert Eden Scott had been fellow students at the University of Virginia, the nurse of secession.

department of the Southern Republic. We parted at Lynchburg on the Upper James, and never met again, his mission taking him to Washington, mine calling me to Richmond. I opened a recruiting station on Bank Street, placed a Confederate flag at the door within a stone's throw of the Capitol of the State, from which floated the stars and stripes, and the next day advertised my business. I was not without a motive. The recruiting service I wanted for a testimony that a new political power had been born on the continent, and that I was its representative in that border land. Soon after I repaired, in full uniform, to the mayor's court, in morning session, and, before his honour Joseph Mayo, took the oath to my commission, which bound me hand and heart to the Confederate States. I had lived in Richmond several years, and knew the ground I was treading. I was standing in the shadow of a revolution.

My contact with the Secession party in the convention at first was entirely social and sympathetic. It was confined to General George W. Randolph, an able member of the Richmond bar; Honourable James P. Holcombe, the eloquent and learned professor of law at the University of Virginia, representing the great county of Albemarle; Honourable James Barbour of Culpeper county; and Honourable Lewis E. Harvie, a delegate from Amelia county. The first three I had known at the university, and my acquaintance with Colonel Harvie was even of an earlier date. Colonel Harvie was a typical Virginian as Virginia then stood—defiant, with crest erect, before she had been crushed in the folds of the constrictor, which had been warmed in Washington's bosom and engendered in his political folly. He was a prominent member of the planter class, had been a distinguished delegate to the State Assembly, and, as a follower of Calhoun, delighted to accompany his master in the nicest distinctions of logic to that shadowy confine where reason stops and

imagination begins. These gentlemen explained to me the condition of parties in the convention, and Mr. Holcombe said: "Our trouble is with your brother; how we shall put a hook in the nose of Leviathan." I replied: "My brother is a Union man, but on the Southern question is as sound as a dollar." They did not understand the force they would control.

But my business was with the Union party in the convention, and that I could not hope to move except through Mr. Scott. My first conversation with him, on the subject of my mission to Richmond, was at the villa of Honourable James Lyons, a leader at the Richmond bar, and later a member of the convention, a mile or two from the city, whose daughter, the accomplished, the brilliant, and beautiful Henningham, Mr. Scott had married. I spread out before Mr. Scott all the evidences of Confederate stability, which so carefully and industriously had been collected at Montgomery; assured him that the Union organs spoke untruly; that a permanent government had arisen in the South, and all that Virginia could do was to choose to which nation she would be attached. My auditor was profoundly interested in the narrative and in my observations in explanation of it. We had left the parlour of the villa and, as if to be more alone, had entered its cultivated grounds, and there the conversation was conducted to a conclusion. It was evident to me, when we parted, that Mr. Scott was impressed by what he had heard, but I was not conscious of the full effect of my words until a subsequent interview. He then remarked with a smile: "You have spoiled one of my speeches. It was designed to advocate a restoration on the old ground. That I suspect is not now possible; but the Union is too valuable to us to be surrendered without a struggle."

A conference of the border slave states was considered by the middle Union party in the Virginia

convention as an agency through which the Union might be restored, when the arts of persuasion had failed ; farther disintegration prevented ; or peace be preserved. With that tier of republics it was expected North Carolina, Tennessee, and Arkansas to unite in action, though in strictness not border states. By this means every slave state, not yet seceded, would be brought together and bound in alliance as a mediatory agent, powerful for war, but more efficacious in the persuasive influence which it would exert on the separated sections. It was opposed by the Secession party because such a subordinate and temporary body, when formed, would interpose an obstacle to their progress to Montgomery. By the ultra Union party it was objected to for the reason that it placed a reconstruction around the centre at Washington beyond their reach, and launched them in a new sea of politics. To this convention of the border states Mr. Scott now turned as an instrument by which a restored Union might be wrought out, an object to which, with the confidence of a strong man, he devoted all the energy of his intellect and character. As explained to me his plan was this: as soon as Virginia had met those border states in conference, to which she proposed to invite them, she would bring forward for adoption the constitution of the United States, but into which had been introduced, as a backbone, such an equilibrium of sections as he had proposed to Secretary Seward, working by an assured apparatus, too strong and too well poised to be jostled out of place by the action of the government, and the conflicts of parties, as had fared with the original design. As soon as the amended constitution should be adopted, or even before the work was entirely finished, the freesoil states, lying along the border, as Pennsylvania and Ohio, were to be invited to adhere to it as the nucleus of a restored union of the sections. At the same time an embassy was to be sent to

Montgomery, inviting President Davis with the Confederate States in their corporate capacity to attach themselves to the new center. This effected, the invitation was to be extended to all the other states. As soon as this Sovereign convention of the states was organized, and an amended constitution adopted, the Union would be restored, standing on the original compromise of the sections. To render the new order agreeable to the West and North, and leave the Republican party a shadow of its victory, along with the spoil of the Democratic camp, it was a feature of the scheme for this revolutionary body to adopt the administration of Mr. Lincoln, Mr. Scott observing, "With an equilibrium of sections in the constitution Lincoln can do us no harm ; or, a new election can be ordered."

Of this plan, as a practical mode of dealing with a question of danger and difficulty, two things may be observed :—

(1) It required not the action of the whole border to set it in motion, but only one co-operating state, as North Carolina, having with Virginia one hand and one purpose. Such a conference, held by two important states, could amend, adopt, and promulgate to all the states, the constitution of 1787, thus amended, as a ground of re-confederation ; as better than disruption, which had come ; as better than war, about to come. (2) As soon as a proposition for a conference of the states, concerning the disorders in the Union, was made to each state, Lincoln would be disarmed, and the virus extracted from the Republican party. The serpent would retain indeed its rattles, but its fangs and poison-bag would be extracted ; for they could not make war on the pretext that it was necessary to restore the Union. As by the wave of a wand in the hand of a master magician, the situation instantly would be changed. Secession, a troubled spirit, evoked by the times and the sorceries of the

Republican party, would disappear, retreating with the shades of night. The question addressed to the North and West then would be : Shall we adhere to the Union as designed by our forefathers, a system of balanced justice ; or shall we make war that we may hold South section for its cane fields, its rice fields, and its cotton fields, as Rome held Africa for its granaries ? With quick intelligence Mr. Seward, and with sturdy common sense Mr. Lincoln, would have seen that they could not plunge the states of the Free Soil section in war to preserve the ascendancy of the North in the Union, contrary to equity and the purpose of the original bargain, against states who consented to a union resting on the reasonable ground of equality. Thus would have been produced a constitutional revolution by a convention of the states, but not convoked according to the prescribed mode ; the mode would have been irregular, but justified by precedent, and by necessity, the imperious law of revolutions. The small boat hugs the shore and so creeps to its destination, but the gallant ship turns her prow oceanward and seeks the harbour by a highway where the hurricane dwells.

Instantly the proposal received my approval, as, by their own act, the Confederate States would be placed in association with Virginia, and, probably, with the other non-seceded states of the Slave section. Mr. Scott conceived that the conference would have greater authority, and Virginia a greater influence in it, if it were supported in the convention by the Secession party also ; for in this way the entire body would be brought together, except a very small, impracticable fraction of it. Being identified by opinion, and my representative character, with the Secessionists in the convention, I was requested to discover if that political interest could be induced to accept the conference of border states instead of their own measure of immediate secession. A caucus of that party, soon after

my arrival in Richmond, had been held in an apartment of the Spotswood Hotel, recognized as Secession headquarters, and I had been honoured with an invitation to attend it.¹ The interests and tactics of the party were discussed in my presence, and I discovered that James Barbour of Culpeper was the leader. He was well known to me: an able man, a lawyer by profession, and ripe and experienced in the public affairs of Virginia. By force of intellect and eloquence he had been the front man of his party wherever he had acted, and I found him in that position again. I approached Mr. Barbour frankly and explained to him the purpose to which a border slave state conference was sought to be applied, and, in strong terms, urged him to bring his party to the support of that measure. I knew that, in common with the leaders at Montgomery, he was a disunionist from necessity, because the South had become a helpless dependent in the Union, and not because he regarded a Slave or Southern Republic with complacency. In a day or two he informed me that his party could not be induced to surrender its chosen ground, and so I reported. My information was received with composure, Mr. Scott simply remarking: "Let them take their vote on secession. They will discover how weak they are, and then they will support the conference: there will be nothing else left for them to do." The vote was taken, immediate secession was beaten, and, as if moving on a pivot, Mr. Barbour's party wheeled into the support of the Border State Conference, the professed and real object of which was to act as an ambassador of restoration and fraternal feeling between the dissevered sections.

About that time I was pained to hear a prominent member of the Secession party declare in a public place, the Exchange Hotel, in the presence of many persons, as if in explanation and defence of his own

¹ The hotel subsequently was burned, a holocaust to the Confederacy.

adhesion to it, that the Border Slave State Conference, by a circuitous way, was but a mode of secession. The member of the convention said :

“The conference now means the secession of Virginia from the Northern Union, but she will not depart alone.”

The convention had held its sessions in the Mechanics' Institute, but had moved across the street to occupy the hall of the House of Delegates upon the adjournment of the legislature. There I heard Mr. Carlyle, a leader in the ultra Union faction, in an animated and determined speech against the conference, say :

“I understand now what the proposed meeting of the states of the slave border means. It means the secession of Virginia, and she is to carry with her, as a retinue, every state of the slave border. I denounce that conference, by whatever name called, and by whatever party proposed, or supported, as a contrivance of the Secessionists. I denounce it as a cat in the meal tub.”

By the courtesy of the door-keeper, and at the request of Mr. Scott, I had been admitted to the floor of the convention, and was sitting across the aisle from him when that speech was made. As soon as it was concluded I advanced to Mr. Scott, remarking :

“Your conference moves too slowly; I fear it will not be allowed to meet.”

It did not assemble, being arrested by a declaration of war from Mr. Lincoln, of which it was the cause—for no man in his sober senses could believe that President Lincoln and his advisers, especially the acute and wily Seward, supposed that the purpose of the conference was to precipitate the border slave states into secession, or that such an advisory and consultative body could have produced so astounding a result. The Virginian delegates, sent by a sovereign body, might have been clothed with extraordinary powers,

but from every other state the deputies would have been commissioned by legislatures, or governors, or by authorities even more subordinate. The declaration of the secession member, exaggerated into undue importance by Mr. Carlyle, was a child's story, and could not have been credited in Washington. The acute intelligence of the Premier reasoned from more assured premises. He understood the object of the assemblage of the border slave states well enough when he beheld the mass of the middle Union party, composed of men of honour and weight, supporting it, Mr. Scott prominent among them with his equilibrium of sections. A conference at Washington had scornfully rejected the equilibrium, but one held somewhere on the border might adopt it and recommend it to the states as ground on which to compound with secession. Federal coercion of state, or section, nowhere to be found in the constitution, defeated the proposed conference. But there was a co-operating agency without which it could not have been effected. A conference of border states, which should have been called promptly, was not called at all. The convention was oppressed by a disease of speaking, an abundance of superfluous breath, the incurable distemper of public assemblies in America, perhaps of such bodies everywhere. It was that cause which enabled its enemies to destroy the conference. Lawyers thronged the ranks of that body, and every lawyer had his speech to make, some of them several speeches. His importance at home demanded it, and that to the lawyer is always of greatest consequence. In this way valuable time was wasted by orators who did not understand the crisis, until the soldier was invoked to settle the quarrels of the politicians. The quidnuncs and the newspapers, at the North, began to say: "Virginia is playing false with the Border Conference. In secret league she is working with the Secessionists." This was what the War party desired, and thus her mission for a restored Union was frus-

trated and the sections plunged in the sanguinary struggle of four years.

It was after Virginia thus had been expelled from the Union, by a crafty policy at Washington, and whilst preparations for war occupied every mind and hand in Richmond, that I stood with Mr. Scott in the Capitol Square, at the base of the equestrian statue of Washington, created by the genius of Crawford. The grounds were covered with volunteer companies from the Cotton section, displaying their various flags, which were hurried forward, as soon as mustered in, as Confederate soldiers, to General Beauregard's camp at Manassas. Martial music charmed the air, and Washington, with stony eye, gazed at the horizon. After we had surveyed the interesting spectacle in silence, I said to Mr. Scott :

"There are but two men in the South who know the true cause of this war, the two who stand here."

He assented ; and I continued :

"I, doubtless, will go down in the strife, but you will survive to relate the fact."

But in the providence of Almighty God the costlier was demanded for the sacrifice, and the other has been left to tell this tale.

After the victory at Manassas, it was placed in the power of South section to restore the Union on the base of the equilibrium, and a statesman, having that as a fixed purpose, would have seized the offered occasion. But Mr. Scott was in private life, not having been elected by the voters of his district to the Confederate Congress, to which before he had been delegated by the Sovereign convention. The North lay prostrate before an army of thirty thousand young planters from the Slave section, to whom war was as a pastime. The young tiger had tasted blood, and was in no mood to listen to odes of peace set to the music of the Union. But the statesman, standing at the helm inflexible, controls armies, and the passions of men

obey him. Mr. Scott was not in the Confederate army. He conceived himself bound by obligations of duty to remain at home and meet the enemy on that field. "Besides," he said, "I know nothing of military affairs." But General Early, who had served with him in public life—notably in the Convention of 1850, and again in the Secession Convention—a Union man as long as it was proper for a Virginian to be so, but then an able and devoted commander in the Southern army, said, in speaking to me of Mr. Scott in his camp at Wolf-run-shoals :

"His place is in the army, for he possesses in an eminent degree the two highest qualities of a soldier,—intellect and courage."

And no one was better qualified to judge these high attributes than that able soldier.

Mr. Scott was killed whilst leading a party of his neighbours in an attempt to capture a band of Federal marauders, who had taken post in a farm-house. The beleaguered soldiers emptied their guns on their assailants, and Mr. Scott, ever careless of danger, received a musket-ball in the breast ; but, gallant and self-possessed to the last, he called to his men to close on them, "Now is your time !" And these were his last words.

This episode has been a long one, but it is not without its uses in this book. It exposes to view self-government in a period of revolution, when a governing authority is most required, and shows what automata the people then are. In war, or in peace, they have as little to do with the government as the spectators with a play, or the soldiers with the command of the army which they compose. They censure or applaud the actors, they obey the orders which they receive—that is all.

We have explored, but not with M. de Tocqueville for our cicerone, the foundations of the Republican system of the United States, and have discovered that

they were laid by a sect of philosophers who expected to control government by a set of moral phrases—saying to Ambition, Be reasonable and just; to Folly, Be wise; to Want, Be satisfied; to the Passions of men, Be hushed. They expected

“ With winning words to conquer willing hearts,
And make persuasion do the work of fear.”

Piping shepherds were those fathers of the Republic, suited to Arcadia and Saturn's reign, but not suited to the heaving, bustling eighteenth century, when they founded a State on a Declaration of Rights which they believed would be respected for all time. Those dreamers were indoctrinated by books, written by other dreamers, teaching that it would be sufficient to hold in check the worst passions and purify from ambition and venality the hearts of politicians. They had made a new departure in politics. Kings and nobles they expelled from the pale. The wisdom of the old past, wrung from the sweat and toil of centuries, they counted as foolishness when set by the new light which they had struck in the wilderness. The commonalty, the great mass upon whom the weight of society rested, occupied with the business and oppressed with the cares of life, knowing a little of everything but knowing nothing thoroughly, they converted by the theory of their system into the active principle of government, and declared them to be the only rightful source of authority. So ignorant were those sapient fathers of the tools which they had to handle, in building the projected temple, that they appear not to have comprehended when they began work, though they quickly learned it, that the majority, the tyrant of their system, evoked from the dark caverns where dwell infernal spirits, was the most irresponsible, and the most despotic, of all the powers of government, and most needed control. Not Cæsar in his palace, not Cæsar on his throne was more so. The

courts, from attachment to forms, which as lawyers they adore, have ventured to impose a single restraint upon that potentate. When they wield their little tridents and wear their sapphire crowns, the judges require the majority to invest its acts with the solemnities of law, a condition not always insisted upon by Congress when it enlarges the Union by the admission of new states. By this novel theory, coined by Jefferson and Mason, government is expected to hold society in obedience by its excellent virtues, not by rude unhandsome force. A century passes—nay, but seventy years pass—and the soldier appears on the scene. He finds the politician engrossed with the profitable business of government, and each man with a fox strapped to his belt. With his gauntlet the soldier brushes away the gossamer fabric, and substitutes the fact of power for an unpalatable theory. Thus perished a day-dream of the eighteenth century, which cost America much blood and sorrow. A gigantic civil war, with its torrent waves, was a rude awakening!

When we would trace ideas to their source, it is a fact worthy of attention that those fine-spun theories of personal and political right did not come from the Puritans of New England, the Yankees of our day, but were the reveries, or the vagaries, of the Cavalier of Virginia, who, expelled by Cromwell from his British home, had created a great state in the wilds of America, as his adversary, the Puritan, had done to the northward of him, in a cheerless, ice-bound region. Thus, in the lottery of nations, those inveterate opponents found themselves confronted on a new theatre. They had been unable to dwell in amity within the bounds of an island, would they be better friends with a new world open before them? We see before us the Saxon and the Norman, standing on the ocean's margin, prepared for great destinies! Far back in race-history the two had sprung from the

same stock. Each had been a conqueror. Now they represented opposing social ideas. The Cavalier and the Roundhead, dwelling apart in their new homes, at first were allies, but they became enemies when buckled in the same belt.¹

During the Puritan ascendancy in the mother country, the Roundhead was the spoiled darling of the Commonwealth, but, after the House of Stuart was restored to the throne, British power looked coldly upon the American Puritan, ever gravitating towards the Republic, whilst it was a nursing-mother to the Cavalier of Virginia, whom it trusted for his loyalty, and favoured for the aristocratic cast in which he had laid the base of his imperial colonial structure. On account of his fidelity, when darkness had gathered around the House of Stuart, his rude country had

¹ Mr. Lecky does not appear to have examined with his usual care the sectional problem when he said: "The conditions of climate which made the Northern provinces free states and the Southern provinces slave states, established between them an intense social and moral repulsion, kindled mutual feelings of hatred and contempt, and in our own day produced a war which threatened the whole future of American civilization."—"England in the Eighteenth Century," vol. ii. p. 19.

The sections would have lived together in friendship under the sceptre of an autocrat, or might have been good neighbours under independent governments, as France and England now are; but the attempt by two such contrariant bodies, or political forces, to carry on a common government made by such a constitution as that of 1787, produced between them an intense social and moral repulsion, productive of hatred, contempt, and war. For all these calamities the Americans have to thank the criminal stupidity of the British Tory party, the crafty politics of the Count de Vergennes, and the ambition of General Washington, not satisfied with the obscure but useful life of a colonial planter and a seat among the burgesses. By the revolution and the Constitution of 1787, Virginia has lost independence and her colonial empire, and has become a tributary of New England capitalists, and her only compensation is the glory of George Washington, which North section very properly claims as its property.

been called the "Old Dominion," and his prosperous development had not been repressed under those bright Western skies. A great empire, recently wrung from France, had been graciously confirmed to this favourite of the Crown. Never were the beginnings of a State so fortunate! But an evil principle had entered into that paradise of nations, and the bewildered and seduced Adam fell off from his bountiful creator. The quiddity of the tea duty, as Burke scornfully calls it—no new tax, to be sure, but the remnant of an old English export duty of which nobody complained—did not quite agree with some notions which, in the leisure of a slaveholder's life, he had learned from Milton and Locke—"did not exactly square with all his theoretical whimsies"—and therefore he went into revolution.¹ For this act of romantic folly his posterity have had the greater part of the territory of their nascent empire taken from them, and themselves, with the leavings of their great inheritance, amerced in an annual tribute of many millions, imposed by the Puritan, swelled out with his accretions, operating what he falsely and insultingly calls a common government. Thus Virginia was

"As is the bud bit with an envious worm,
Ere he can spread his sweet leaves to the air,
Or dedicate his beauty to the sun."

Very unlike the Cavalier of Virginia was the Puritan of New England, descended from the pirates and robbers of Scandinavia and the Cimbric Peninsula. This man did not at all disturb his thoughts with the metaphysics of politics, like his softer, visionary brother of the South, but was always looking for solid results. "Money is a steady friend," and that maxim comprehended with the Puritan the whole philosophy of life, and was even more venerated in New England than

¹ George Tucker's "History of the United States."

it was in Scotland, where the saw had been formed.¹ The rugged and inhospitable zone which he inhabited reminded him each hour of the wisdom of this homely adage—a land not the ideal abode of the dreamer! The Navigation Act always had injured his business, and its bonds had been tightened by George Grenville, one of the purblind statesmen of England, a lawyer set at the head of a great empire, Phaeton driving the sun-chariot, whilst the Puritan, with his Norse blood stirring in his veins, longed for the freedom of the seas. With the ocean open to his adventurous sail, he was satisfied that he would be able to traffic as profitably in the productions of the Spanish and French West Indies as he then traded in slaves torn from the barbaric shores of Western Africa, to supply the plantations of Virginia and Carolina, and fill his barracoons for casual customers. But the liberty of nature he could not hope to enjoy except with independence, for the unconstitutionality, which he had charged with success on the Stamp Act, could not be urged against these restrictions on his trade, which were authorised by undoubted parliamentary precedent.² Therefore he resolved to precipitate independence, and, in that congenial enterprise, stood ready to employ force or guile, as either would serve his purpose. With the theoretical, dreaming Cavalier, the revolution was a sentiment which did little honour to his head; but with the Yankee, it meant thrift and power. For that act done in the colony era, like the penalty of original sin, the visionary has been made the serf of the unscrupulous slave-dealer, and the rude Saxon has conquered the polite and chivalrous Norman. Such is retribution in history.

¹ I find the honoured proverb in the "Wealth of Nations."

² See Marshall's "Life of Washington," first edition, where the subject is carefully and candidly examined by a mind competent to deal with it.

But truth requires it to be told that a free ocean commerce was not the only, nor the strongest, motive that impelled the New Englander in his course towards independence. He trusted to induce Catholic Canada to join his revolt by the offer of a Union to the Canadians, a subtle contrivance of conquest and enslavement, as well understood by the Yankees as once was, by that martial nation, the adoption as "the friend and ally of the Roman people." As soon as the unhappy province should be withdrawn from British protection by the treacherous bait of independence and moulded to New England, he would hang and whip the Catholic, who did not adore the Puritan God, as, for that pious felony, he had hanged and whipped the Quakers. Outside of slavery and the slave trade, with their attendant severities, religious persecution was the only solace of that gloomy fanatic. Indian slaves he had tried, but they had proved too feeble for his work, and, like the humane Las Casas, he substituted the robuster negro.¹

¹ "The History of Slavery in Massachusetts," by Mr. George H. Moore, Librarian of the New York Historical Society, &c., confirms this statement by the ample proofs which it contains. The book abounds with revolting pictures. It presents the Puritan left free in a new world to develop his avaricious and cruel nature. On the first pages are given the earliest records of slavery in Massachusetts, the period of the Pequod War, which occurred a few years after the English settlements had been founded. In 1637, Hugh Peter writes from Salem to John Winthrop: "Mr. Endicott and myself salute you in the Lord Jesus! We have heard of a dividence of women and children in the Bay and would be glad of a share, a young woman, or girl, and a boy, if you think good. I wrote you for some boys for Bermudas, which I think is considerable. In the Pequod War we took many prisoners, who were disposed of to particular persons in the country." Winthrop, P. I., the same authority, says: "Two hundred and thirty-two of these captives ran away, and having been brought in again were branded on their shoulders." Winthrop states, vol. i. p. 234, "We have now slain and taken in all about seven hundred. We sent fifteen of the boys and two women to Bermuda, to Mr. Pierce, but missing it, he carried them to Providence

Mr. Moore's book is difficult to be obtained, but a friend,¹ finding it in a library of Baltimore, has picked out these delicate morsels for my use. An attempt was made to suppress the work, but before the ship is scuttled a part of the cargo has been saved.

CHAPTER IV.



HIS chapter will be devoted to the agitation for Federal reform, out of which grew the constitution which now governs the Union. It forms a part of the history of that renowned polity, important and interesting, and will afford, in the means by which it

Isle." Governor Winthrop, writing to Governor Bradford, of Plymouth, an account of the success against the Pequods, says: "The prisoners were divided, some to the Connecticut colony, the rest to us. Of these, we sent the male children to Bermuda, to Mr. Pierce, and the women and maid children are disposed about in the towns." (Pp. 4 and 5). Emanuel Downing, a lawyer of the Inner Temple, London, who married Lucy Winthrop, came to New England in 1638. He informs his brother in a letter: "A war with the Narragansetts is very considerable to this plantation, for I doubt not if it be not sin in us, having power in our hands, to suffer them to maintain the worship of the devil, which their Paw-waws often do. If, upon a just war, the Lord should deliver them into our hands, we might even have men, women, and children enough to exchange for Moors, which will be more gainful pillage to us than we concern for, for I do not see how we can thrive until we get into a stock of slaves to do all our business, for our children's children will hardly see this great continent filled with people; so that our servants will still desire servants to plant for themselves and not stay but for great wages. I suppose you know very well how we shall maintain twenty Moors cheaper than one English servant."

¹ That friend is my brother, Dr. Martin P. Scott, a Professor at Blacksburg College, Virginia, who had been told of my line of thought, and who coincides in my estimate of the American Puritan, who would enslave the Indian race and emancipate the African.

was brought about, convincing evidence of the correctness of our general proposition, that in these liberty systems of the West the politician is the true actuating power, the voters being but dumb figures moved that the game may be played—ciphers, indeed, which are rendered potential by the numerals to which they are attached. Perhaps the reader will not condemn as superfluous, or fatiguing, a multiplication of examples to enforce this essential truth, as the ordinary man, except by the logic of facts, cannot be disenchanted of the belief that the Republic is a mode of political life derived from, and directed by, the people—an error bathed in tears and blood, like the altar of some grim idol! To render the subject intelligible, it will be necessary to place the reader where the men of that generation stood, by an examination of the purpose and the structure of the Articles of Confederation, to alter which the various reforms were proposed, and to supersede which a new constitution finally was made and adopted. It is a continuous narrative, and no part of it should be omitted, as it sets before us in the truest colours the character of the politician, with his unfair and specious devices. It shows that of all sovereigns he is the most disqualified, from the absence of unselfish motive, to reign over a nation. Alexander Hamilton compared the Confederation, or first constitution of the United States, to a man moving on crutches, and declared it to be fit neither for peace nor war, a verdict which we will not record until its correctness has been ascertained and the jury polled. As a form of government the articles were reported by a committee of Congress eight days after the Declaration of Independence was adopted. They were debated and amended, as the opportunities of Congress allowed, until the 15th day of November, 1777, Congress, until that time, conducting public affairs without a constitution, but professing to be guided by the proposed Federal Articles after they were formed. It was then

submitted to the states for approval, as provided in the articles, but accompanied by a circular letter in which Congress speaks of the extreme difficulty of their task: "This business, equally intricate and important, has, in its progress, been attended with uncommon embarrassment and delay, which the most anxious solicitude and persevering diligence could not prevent. To form a permanent Union accommodated to the opinion and wishes of so many states, differing in habits, produce, commerce, and internal police, was found to be a work which nothing but time and reflection, conspiring with a disposition to conciliate, could mature and accomplish." Such were the obstacles, insurmountable, a Burke would have thought, which those statesmen encountered in constructing their first general government. Jefferson, always industrious, has preserved a fragment of their debates, from which may be judged the perplexing questions which intruded for adjustment. But perseverance was rewarded by the creation of a system of Union for the states, which established itself in the affections of the people so strongly, that subsequently the politicians found it impossible to disengage them from it when they sought, in pursuit of their own schemes, to bring it into discredit.

After a decent delay of six days the Federal Articles were adopted by the Legislature of Virginia on the 11th day of December, 1777; and, in the early part of the ensuing year, nine other states accepted them, and its ratification in Congress by their delegates, duly authorized, occurred at successive dates. But the work of adoption was not finished, and the government rendered operative, until March 1st, 1781, when Maryland acceded to the league, and completed the circle of adopting states.

As early as July 21st, 1775, the sage Doctor Benjamin Franklin, one of the few worthies destined never to be forgotten, proposed to the Continental Congress

a plan of government entitled "Articles of Confederation and Perpetual Union of the Colonies," which formed the first feeble germ of the colossal power which dominates the ocean-bound Republic of the United States. That proposed constitution for the "United Colonies" certifies an important fact, as it was designed for them when they were enticed, by French diplomacy, into taking the first false step of fighting in the British Union, that they might wrest by force from the King a redress of grievances, as had been done at Runnymede, to be guaranteed also by a great charter. Such was the plan that had been digested in Paris by the Count de Vergennes, and accepted by his obedient servants in Carpenter's Hall. The colonists, deceived by the liquorish bait, were caught in the diplomatic trap. As proof that they were induced by cajolery into taking up arms to redress grievances, as their ill-humours were pompously styled, I lay before the reader a portion of a "Declaration to the People of the Colony of Virginia," published by the Convention of July, 1775—for it is fitting that truth, when she goes abroad, should be accompanied, like a right royal lady, by a retinue of evidences and vouchers. Under the advice of the conspirators assembled at Carpenter's Hall, in the city of Philadelphia, hostilities had been precipitated in Massachusetts. The civil war, thus begun by State, or rather by Colonial authority, was adopted by Congress, still holding its sessions in the territory of the British Empire; Washington was appointed commander of the rebel forces, and, by the concerted action of a revolutionary faction, the resistance was spread into every colony. The declaration of Virginia, notwithstanding the fact of war, concludes with these remarkable words—the revolution wearing the mask of loyalty until the last moment. Such were the snares by which that unhappy people were encompassed, such the falsehood and fraud by which they were betrayed

by the tools of France playing the *rôle* of patriots ! The Revolutionary party in Virginia, assembled in convention, thus speak : “Lest our views and designs should be misrepresented, we again, and for all time, publicly and solemnly declare, before God and the world, that we bear faith and allegiance to his majesty George the Third, our only rightful and lawful king. That we will, as long as it may be in our power, defend him and his government, founded on the laws and well-known principles of the constitution ; that we will, to the utmost of our power, preserve peace and order throughout the country ; and endeavour by every honourable means to promote a restoration of that peace and amity which so long, and so happily, subsisted between our fellow-subjects in Great Britain and the inhabitants of America ; that as, on the one hand, we are determined to defend our lives and properties and maintain our just rights and privileges at every and the extremest hazard, so, on the other, it is our fixed and unalterable intention to disband such forces as may be raised in this colony whenever our dangers are removed and America is restored to that former state of tranquillity and happiness, the interruption of which is so much deplored by us and every friend of the country.”

Ten months later the same body of patriots, with these oaths and protestations of loyalty still in their mouths, adopted a Declaration of Independence, to be followed in a few months by the historical declaration which Jefferson wrote for the Continental Congress, and which was adopted on the succeeding 4th of July. In that disloyal assembly, representing a revolutionary faction in Fauquier county, recently excised from the ample domain of Prince William county, sat Colonel Martin Pickett, the maternal grandfather of Honourable Robert Eden Scott, and Captain James Scott (the heir in tail), his father’s uncle, both planters

and slaveholders in the colony.¹ But his father's father, John Scott, a younger brother of Captain James Scott, adhered to the Crown, and, with manly firmness, endured the persecutions of those times. He had crossed the great river into Maryland, and, in conjunction with Sir Robert Eden, whom he had known whilst he was abroad engaged in the business of education, one on the Vice-regal throne, the other in the popular assembly, there had breasted the revolution, how vainly, the result, and his own expulsion from the colony, proved. The patriots, as those misguided men called themselves, seized him, tried him at Annapolis, and, after other places of exile, sent him back to Fauquier with a judgment not to come again within fifty miles of their boundary; for Luther Martin, the orator of the revolution, said he was his most formidable opponent.² After his return to Virginia he took no further part in the revolution, except, if local tradition may be trusted, to induce a company of volunteers, on the march to join Washington, engaged in the siege of Boston, to return to their homes. Perhaps, with the intuition of a scholar, he saw, outlined in the shadowy distance, the dark Northern tyranny which the Round-head afterwards established over the empire of the Cavalier, as the result of the movement for independence.

When, soon after, Lord Howe came, offering a re-

¹ Honourable Robert Eden Scott was the oldest son of Judge John Scott of Oakwood, one of the Justices of the General Court of Virginia. Judge Scott was younger brother to Professor Robert Eden Scott, and grandson to Professor Thomas Gordon, both of King's College, Old Aberdeen, Scotland. The older son was born whilst his father was a student of King's College, but the younger was born at Gordonsdale, in Fauquier county, during the revolution, "in the worst of times," as the family Bible still records.

² These facts were communicated to me when a child by my aunt, Mistress Peyton of Gordonsdale, a daughter of John Scott.

dress of grievances, the revolutionary leaders, as Marshall tells us, sent Franklin and John Adams to meet the British Plenipotentiary, in an island of New York Bay, to baffle and defeat the negotiation, which those expert and crafty ministers succeeded in doing.

Upon the policy of the revolutionists, Marshall thus frankly remarks : " Hitherto the war had been carried on with the avowed wish to obtain the redress of grievances. The utmost horror at the idea of attempting independence had been expressed ! "

Events followed in the train prepared by the plotters of Carpenter's Hall. As expected, by the French Court and the co-conspirators in America, the injuries and passions, attendant on war, more widely separated the belligerents, and a twelvemonth closed in a declaration of independence, instead of restored friendship. Jefferson, safe under the flag of a victorious republic, frankly admits, but for the atrocities committed on the colonial population by the Waldeckers and Hessians, during that period of war, that independence could not have been carried through the Congress. The American Revolution then, when we get behind the curtain, and into the secrets of a revolutionary conclave, we find was not produced by the oppressions of the British Government, according to the common American story, but by the statecraft of the Count de Vergennes, the Premier of Louis XVI., carried into effect by a treacherous party in America. This, then, in the long black catalogue, is the first great deception which the politicians of America practised on the people. To discover it we must recur to the period when the national life began, although adepts in that bad art had preceded them in the colony of Virginia. This statement, directly and unconditionally made, is sustained by the testimony of Jefferson, actor and witness in those important scenes. The convention, which tore Virginia from the empire of George III., instituted an indepen-

dent Republic, and dispatched five delegates to propose independence to the Federal Congress, met in Williamsburg, May, 1776, having received even from the faction which elected it, authority to do no one of these things, but were commissioned only to attend to the ordinary public business, and employ the resources of the colony in waging the remarkable contest in which Congress, at the instigation of the French Government, had engaged it. In its earliest germ, as in its aftergrowth, we discover the Republic of the United States to have been exclusively the work of the politician. The voters did not authorise the separation from England, and their leaders dared not invite them to render it legitimate by a popular ratification. It was a criminal conspiracy, to which Washington was both privy and party, and the means of tracing it still exist. Virginia was the important power to gain. Until she had leaped the strong barriers of the Empire, the revolutionary party in the other colonies cautiously held back. She was made to play the part of Archibald-Bell-the-Cat, in Scotch history. Both Jefferson and Hugh Blair Grigby, the Froissart of Virginia—except that Froissart wrote about soldiers and Grigsby writes about politicians—set the transaction clearly before us. I quote from Jefferson: "On the discontinuance of the assemblies, it became necessary to substitute some other bodies, competent to the ordinary business of government, and to the calling forth of the powers of the state for the maintenance of our opposition to Great Britain. Conventions therefore were introduced, consisting of two delegates from each county meeting the others, and forming one house on the plan of the former House of Burgesses, to whose places they succeeded. They were at first chosen for every particular session. But in March, 1775, they recommended to the people to choose a convention that should continue in office one year. This was accordingly done

in April, 1775, and, in the July following, that convention provided for the election of delegates in the month of April annually. It is well known that in July, 1775, when the Declaration was adopted, a separation from Great Britain, and establishment of republican government, had never entered into any person's mind. A convention, therefore, chosen under that ordinance, cannot be said to have been chosen for purposes which did not exist in the minds of those who passed it. Under this ordinance, at the annual election in April, 1776, a convention for the year was chosen. Independence, and the establishment of a new form of government, were not even yet the objects of the people at large. One extract from the pamphlet called "*Common Sense*" (written by Thomas Paine) had appeared in the Virginia papers in February, and copies of the pamphlet had gotten into a few hands. But the idea had not been opened to the mass of the people in April, much less can it be said that they had made up their minds in its favour. So that the electors in April, 1776, no more than the legislators in July, 1775, not thinking of independence and a permanent republic, could not mean to vest in these delegates powers of establishing them, or any other authorities than those of an ordinary legislature. So far as a temporary organization of government was necessary to render our opposition energetic, so far their organization was valid. But they received, in their creation, no powers but what were given to every legislature before or since. ("*Notes on Virginia.*") In this statement Jefferson only desires to instruct Marbois in the fact that the convention had no authority from the people to make a constitution, but only an authority to enact a repealable ordinance, which he contended the first constitution of Virginia was,—repealable by the legislature. But truth sometimes carries a double edge.

So far then as the colony of Virginia was concerned, we have proof that the revolution of 1776, with its long

train of adversities, was unauthorized by the people of Virginia, and unauthorized even by the party of grievances. It is plain then that the men who pushed Virginia out of the British Union, and inveigled her into the American Union, were usurpers of the popular authority, countenanced and led by French influence, and sustained by French arms.

The desertion of the American army and cause by General Benedict Arnold, when in the splendour of his military reputation, and the reasons which impelled the dishonourable act which accompanied it, strikingly illustrates this part of American history. In common with others who sought to obtain a redress of grievances, Arnold concurred in the dangerous policy of armed resistance as the one best calculated to effect that object. To carry it out, and give it a formidable aspect, Congress projected a constitution, enlisted an army, appointed a commander-in-chief, issued an immense volume of paper money with which to supply their treasury, and adopted other measures suitable to the belligerent character. Avowedly for the redress of grievances, but for nothing more, Congress adopted the siege of Boston, and sent their general to assume command of the army of New England.¹ In this contest with the legitimate authority, Arnold, by brilliant displays of military talent, courage in battle and fortitude under the severest hardships, had won the admiration and acquired the confidence of the army, of its commander, of Congress, and of his party. Had he been reconciled to drift with the current, originated at Carpenter's Hall and directed by Congress, and have passed from armed resistance into revolution, there was no object to which a reasonable ambition might not have aspired. But, amid the clash of arms,

¹ The correspondence of Washington, even in Sparks' expurgated edition, contains a strong expression of this policy. The American orators and pamphleteers talked much and loudly of Runnymede and the Great Charter.

the patriot was not extinguished in the soldier, nor the purpose forgotten which had brought him to the field. The conviction that a British connection was necessary to the welfare of the undeveloped colonies was rooted in General Arnold's opinion. Nor was he undeceived when the Declaration of Independence appeared ; for he regarded that measure, according to the general explanation, as a mere stroke of policy designed to alarm the ministry and hasten the full concessions which at last were made. Whilst it stood alone, the Declaration was revokable at the will of Congress. It bound no body but themselves. But the error into which he had been betrayed, by trusting the assurances of Congress, was discovered in 1778, when King and Parliament tendered to the colonies such a redress of grievances as was demanded by the colonial or state legislatures, and by Congress. At the same time the military convention with France was made public. These acts coming together exposed the designs of the Revolutionary party, of Congress and of the Commander-in-Chief. Arnold published a vindication of his conduct, and it is but fair, in a work which awards justice to all, to allow the great offender to speak for himself : "He originally took up arms because he really believed the rights of his country endangered ; and although he thought the Declaration of Independence precipitate, yet, by many plausible arguments in its favour, he was led to acquiesce in it, as a measure to ensure and hasten a redress of grievances. But the rejection of the overtures made by Great Britain in 1778, coupled with the military alliance with France, had opened his eyes to the ambitious views of those who would sacrifice the happiness of their country to their own aggrandizement, and had made him a confirmed loyalist."¹ There is a copy of Arnold's address to be found in the National Library which I have not seen.

¹ Marshall's "Life of Washington," vol. iv. p. 287, First Edition.

Deceived by a political party with which he had allied himself, Benedict Arnold determined to withdraw from a cause discredited by deception, and return to the allegiance of his King. But he joined a justifiable act with one which has covered his name with merited infamy, the memory of which is graven deeper because of its connection with the cruel fate of Major John André.¹ American historians would further blacken the name of the traitor by accusations of extortion and speculation, whilst he was in command at Philadelphia, but which have not the appearance of probability. General Arnold had made himself obnoxious to the Governor of Pennsylvania, and certain citizens of influence who resided in Philadelphia, in the exercise of his authority as commandant of that military post. In consequence charges were preferred against him by the Governor to Congress, and the General-in-Chief was ousted of a legitimate jurisdiction over a military subordinate. The accused officer was arraigned before a court-martial, and, after a tedious delay of a twelvemonth, was sentenced to receive a reprimand from General Washington ; surely not a victory to the accuser when the enormity of the charge is considered. And such appears to have been the judgment of the General, the army, and the public, as well as of some of the most respectable characters in Congress. But the Republic required General Arnold's courage and talents in the war, and, although suffering from wounds received at Saratoga and Quebec, he was chosen by his military chief to command the left of his army in the projected advance on New York. But disabled for active duty, Arnold was placed in command at West Point, the stronghold on Hudson River, an important post suited to

¹ In a letter to Miss Schuyler, Hamilton states André's case—one hero lamenting the fate of another. See "Life of Hamilton," by his son.

the distinguished merit of the invalid officer, not one disgraced by peculation, or the suspicion of it. For that command he was recommended by General Schuyler of New York, as well as by Livingston, a leading congressman from that state; a satisfactory answer, it would appear, to the charge that the treason was produced by the result of a political court-martial and embarrassed finances. The explanation of General Arnold's conduct is different, and it concerns the intelligence and impartiality of history that it should be given in this place. He was caught in the toils of a casuist, and conceived himself to be justified in betraying a commander who, as the leader of a political party, had deceived the country, the army, and himself. Arnold's intelligence should have saved him from the meshes of that error, and have taught him that treachery to a military trust, under whatever provocations, is inexcusable, and that it is only the successful perfidy of the politician which is condoned and rewarded with the heaven-kissing monument.¹

¹ The apology for the adoption of the Declaration of Independence, without the consent of the constituents of Congress, was that it formed but a part of a connected plan for obtaining a redress of grievances, and that is the only defence to be made of the Act. The exertions which Congress and General Washington made to prevent the British proposals from being publicly circulated, and their efforts, through the press, to neutralize them, where that object could not be attained, afford, if they stood alone, the greatest probability to the opinion that the colonists in the outset were strongly opposed to the severance of the British connection, and continued to be so. The account which Marshall gives of those transactions operates to confirm belief in Arnold's statement, and that the revolutionary leaders distrusted the people, if left free to act on that question. Here is what the Chief Justice says when he writes of this period of his history :

"After the repetition of several motions, on the part of the Opposition, tending to the abandonment of the American War, Lord North gave notice in the House of Commons that he had digested a plan of reconciliation which he designed shortly to

When we examine the text of the constitution of the Confederation, we are struck by the fact that it was but an unskilful attempt to place the states in the same relation to the government of the Union as that in which they claimed to have stood, constitutionally, to the British throne ; for such extreme partisans as Jefferson and the youthful Hamilton contended that the jurisdiction which the Parliament asserted over the colonies, was a relic of the Parlia-

lay before the House. In conformity with this notice, he moved for leave to bring in ' First, a Bill for removing all doubts and apprehensions concerning taxation by the Parliament of Great Britain in any of the colonies and plantations of North America ; second, a Bill to enable His Majesty to appoint commissioners with sufficient powers to treat, consult, and agree upon the means of quieting the disorders now subsisting in certain of the colonies of North America.' " Such were the captions of the two Bills which contained, in the amplest form, every concession that had been demanded by the colonies as a condition of a renewal of their friendly relations with the British Empire. These Bills, even before their passage through Parliament, were hurried off to America so as to anticipate the arrival of the French Treaty. Marshall continues his narrative : " General Washington had very early intelligence of their arrival, and entertained very serious fears of their operation. The disaffected in many parts of the United States already were very numerous, and he was extremely apprehensive that the publication of any proposition which would restore peace, and that too on the terms originally required by America, would greatly increase their number. He feared that so many would be disposed to abandon the struggle for independence ; and, for the sake of present ease and safety, would be ready to renew their ancient connection with Great Britain, modified according to the wishes of America previous to the war, as to increase very much the difficulties of continuing the contest, and render its issue extremely doubtful. He immediately forwarded the Bills to Congress in a letter strongly expressive of his fears, and suggesting the policy of preventing, *by all possible means*, and especially through the medium of the press, the malignant influence they were calculated to have on the public mind." One of Arnold's capital complaints was that the British proposals were not submitted to the people in their state legislatures, instead of being considered, and rejected, by Congress sitting in secret session.

mentary ascendancy, and contrary to the true principle of the British Constitution.¹

Accordingly upon the state assemblies were devolved the mass of the political powers, together with the old royal jurisdiction of regulating trade.²

All Federal power, at least so much as state jealousy would part with, was confided to a Congress which consisted of one chamber, composed of delegates elected by the assemblies, which, with its limited jurisdiction, resembled a congress of ambassadors. No judicial authority was conferred on the Confederation, whilst that of an executive nature was exercised, at first, by committees or boards, appointed by Congress, but later by a Secretary of Foreign Affairs, a Superintendent of Finance, a Secretary of War, and a Secretary of Marine. These officers were chosen by Congress, and were removable at the pleasure of the appointing power. The change in the executive organization was proposed and advocated by the enterprising genius of Hamilton, and Madison has preserved the debate in regard to it. Thus from the Articles of Confederation a parliamentary government was evolved, a form of republican liberty unadulterated with any foreign element, as Congress claimed with satisfaction in one of its communications to the states. This fact, amid reproaches which it became fashionable to heap upon the Confederation, has not been adverted to before, but it is important to be taken notice of here when we are engaged in tracing to their sources the principles of the Republic. It ought to be borne in mind by every British subject who loves his country and values the stability of its government, that the party of self-government and liberty in the United States, when searching for a

¹ Hamilton's "Westchester Farmer"; Jefferson's "Notes on Virginia."

² Hallam's "Constitutional History of England."

republican model, discovered it in the government of England deprived of the House of Peers, the executive administration being already usurped by the House of Commons through a responsible ministry, an act which converted the monarchy of England into a democratic republic, with the vices inherent in the system.

The object of the Federal agency was to preserve order and justice among the states, and protect them from external attack. Congress, accordingly, was provided with the powers of war and peace, and with the consequential authorities of supporting armies and navies and negotiating treaties. Every other Federal jurisdiction was ancillary to these objects. The taxing power, so indispensable to the existence of a nation, and yet so delicate in every mode of entrusted authority, was retained by the states, but Congress was authorized to make requisitions upon the legislatures for supplies, as the Crown, during the French war, had made upon the colonial assemblies, and at one time made on an Irish parliament. The eighth article of the Confederation provided, in these words, for that important power: "All charges of war and all other expenses which shall be incurred for the common defence and general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of the common treasury which shall be supplied by the states in proportion to the value of the land within each state granted and surveyed to any person as such land and buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled shall from time to time direct and appoint. The taxes for that purpose shall be laid and levied by the authorities of the legislatures of the several states within the time agreed upon by the United States in Congress assembled." The delegates in Congress were appointed annually by the legislatures, and were paid by them, whilst the

further power was reserved to recall them and substitute other delegates. As a branch of the taxing power each legislature exercised exclusive jurisdiction over the custom-house.

It is obvious that, however sound in principle, and perfect in joinery, the constitution might be, its successful action would depend upon the fidelity with which the states contributed their quotas of revenue. It was upon that ground that the Confederation broke down. The inclination of the legislatures has been impeached by Madison, but upon no just ground. The temporary poverty of the tax-payer, produced by an evident cause, was the reason of the noncompliance of the states, and this is the testimony of the most trustworthy authorities.¹ The states possessed adequate physical power, and adequate sources of taxable wealth, to comply with all the obligations of a national government under an ordinary condition, and the cause of so great embarrassment, amid such abundance, is a striking fact which we discover in those times. It produced all the schemes of national reform which resulted in a constitutional revolution by agencies which will be pointed out.

As long as the paper currency, emitted by Congress, answered for a circulating medium, the war was supported by it, but, when it lost value, the war was brought to a successful issue by aids and loans and such other shifts as Congress could devise. It was supposed that with peace the ability of the tax-payer would be restored. But, instead of the imagined free trade with the mother country, the false hope with which the revolution was begun and was prosecuted, a war of imposts was declared against the export trade of the new Republic by the British government, under the belief that the public distress thereby created would

¹ See the speeches of Henry and others in the Virginia Convention of Ratification (Elliot's Debates).

compel the states to renew the old connection with the Empire. But this proved to be an error in the advisers who encouraged the vindictive temper of the British King. The burdens imposed by the policy of other powers were equally vexatious and injurious, and it seemed that all Europe was banded against the trade of the Republic of the New World. Productions of agriculture sank rapidly and continuously in value, and it was discovered that a free people would not distress themselves by the payment of taxes to sustain the public credit. This condition of the national fisc aroused the spirit of Federal amendment.

The debt of the United States on the first day of January, 1783, amounted to forty millions of dollars, and was distributed among four classes of creditors. The first in dignity and obligation, the Congress thought, was the debt to France, whom Congress described as "an ally who, to the exertion of his arms in the support of our cause, has added the succours of his treasury; who, to important loans, had added liberal donations, and whose loans themselves carry the impression of his magnanimity and friendship." The second class was composed of creditors who lived in Holland and France; and the third class of home creditors, from whom property had been distrained or loans obtained. The fourth class were the soldiers, the most clamorous, and the most deserving, if we accept their own estimate of merit, and they threatened force unless their demands were complied with by a bankrupt treasury. The solicitations and representations of John Adams, an envoy of Congress, had procured a further loan from Dutch bankers, out of which the interest on the foreign debt had been paid; but, when expended, the United States possessed no means of replacing it; whilst, under the limitation of the creditor's compact, the first installment of the principal of the debt would be due the succeeding year. The domestic debt, under that financial pressure, had

sunk to a tenth of its nominal value. From November 1st, 1784, to January 1st, 1786, the requisitions paid by the states into the treasury of Congress, amounted to only 182,097 dollars, a gloomy outlook, in the beginning of a political life, for a superintendent of finance. But the energy of the young Republic rose as troubles gathered around it. Men of the first distinction, in civil and military life, obtained seats in the Congress of 1783, to aid, by their influence and talent, in sustaining a Republican government that had been established in the New World by the policy and arms of the most despotic throne in Europe.

The committee of Congress, to whom had been referred the subject of Federal finance, reported on the 7th of March, 1783, a plan of liquidation which required permanent funds to be vested in Congress by the states adequate to the immediate payment of the interest of the national debt, and the gradual liquidation of the principal. The funds were to be raised by duties collected on imported articles, supplemented by internal taxes. In addition, the committee's report proposed a change in the rule by which the proportion of the taxes, collected from the different states, or rather from the two sections of states, was to be ascertained, and that population should become the measure of contribution, instead of the land valuation, as provided by the Articles of Federation. Then first appeared in American politics the Federal number, its object being to distribute equally the burden of taxation between North section and South section. The difficulty to be solved was, in what proportion to the white population negro slaves should be rated. Various propositions had been advocated, when Madison, according to his own report, happily suggested as an equal measure that five slaves should be counted as three freemen. This was accepted as compromise ground. That scheme of finance involved alterations in the organic law, and began the agitation

for constitutional amendment. It embraced the following objects : first, the grant by the states to Congress of a power to levy for a term of twenty-five years certain specific rates of duty on enumerated articles of general consumption, brought from abroad, and upon all other imports an uniform duty of five per cent. *ad valorem*. The product of such duties was to be set apart to pay the interest and principal of the war debt. But, as it was computed that their proceeds would still leave a million and a half of the annual interest unpaid, it was provided, in the proposed financial plan, that the states should establish, by domestic legislation, for twenty-five years, revenues to be devoted to the unpaid interest. For the collection of both descriptions of revenue, officers were to be appointed by the states, but to be responsible to Congress, and removable by the Federal authority. To aid these funds the states were invited to relinquish to the general government all claim to unappropriated lands. Finally, as the rule for the apportionment of Federal taxes according to a land valuation, as directed by the eighth article, was difficult, and uncertain in its execution, it was proposed, in lieu of that provision, to insert one which provided for a periodical census of the Union, and a distribution of taxation among the states according to population, counting five slaves—as Madison had proposed—as equivalent to three freemen. Thus was the overpopulousness of the South section to be provided for, and an equilibrium of taxation produced between the sections. But there was another provision in the committee's report which, after debate, Congress did not change, but from which it was compelled very precipitately to retreat, as no state would accept the proposition of finance clogged with that condition. The objectionable clause was in these words : "That none of the preceeding resolutions shall take effect until all shall be acceded to by every state ; after which acces-

sion, however, they shall be considered as a mutual compact among the states, and shall be irrevocable by any one or more of them without the concurrence of the whole, or of a majority of the United States in Congress assembled." This proposition of finance, in all of its parts, was referred to the legislatures, accompanied by another committee's report, urging its acceptance as necessary to preserve the Federal credit, and impart efficiency and stability to the Union. A patriotic address from the classic pen of James Madison was not the only persuasive influence brought to bear on the public conscience. General Washington was a formidable piece of ordnance which, after peace had been restored, the Federalist leaders reserved for great occasions. That peerless character was about to relinquish command of the army of the Union, and was getting ready to celebrate that important event by a circular letter to the governors of the states. The politicians in Congress induced General Washington to engraft on that address to the governors a recommendation to the legislatures of the propositions of finance submitted by Congress to the states, under the belief that a joyful and speedy acceptance of them would, in that way, be secured. In tedious detail the circular is spread on Marshall's historic page. It must have been a mortifying circumstance to a victorious general that his elaborate address should have produced no result, although, by request of the writer, it had been laid by the governors before each legislature. The Federalists, a disciplined corps of admirers, received it with hosannas, but the thunder-gun reverberated over mountain and vale until its echoes died softly away. The assemblies contained statesmen not unacquainted with the influences which prevailed with General Washington, whilst they considered themselves qualified to judge problems of finance as wisely as the planter of Mount Vernon, or his promoters and advisers.

Congress discovered that the feature, so ingeniously contrived, which made the scheme of finance to interlock and dovetail and be not separable into parts by the ratifying power, and which gave it the force of a constitutional amendment, had proved fatal to it. They promptly receded, and besought the legislatures at least to yield the impost of five per cent. *ad valorem*. The Assembly of New York had annexed to the grant of the impost conditions which operated to defeat or greatly impair the value of the concession, and Governor Clinton, on frivolous grounds, as appears, refused to convoke the Houses that the proposition might be re-considered, and so the impost, requiring a unanimous grant by the states, was lost. But the inability of the legislatures to comply with the demands for revenue was produced by a cause, to remove which called for another grant of Federal power. In consequence of the war of imposts waged by foreign tariffs on the export trade of the states—in intention by England, in effect by the rest of Europe—the legislatures, but without concert, adopted a policy of commercial retaliation. This, in some of the leading states, aggravated the evil, for their import trade deserted harbours fenced about by prohibitions and high duties, and sought ports where it was received on more hospitable terms. Virginia, still controlled by the party which had seized the government when the burgesses were so rashly dissolved by Governor Dunmore, had led the way in retaliation, and had inflicted on her foreign trade deep wounds which no balsam has been able to heal. The trade of Norfolk, standing on the deepest and most capacious harbour on the Atlantic coast, was attracted to Baltimore, at the northern extremity of the great bay on which both cities were situated, or was expelled to Philadelphia, whilst that of Alexandria-on-Potomac was received by Georgetown, on the soil of Maryland, seven miles higher up on that stream. On December 10th, 1783,

Madison writes to Jefferson that Virginia, "in commerce, was a dependent on Baltimore and Philadelphia, and, judging by a comparison of prices there and in Europe, did not pay less to them than thirty or forty per cent. on the exports and imports—a tribute which, if paid into the treasury of the states, would yield a surplus above all its wants." There could not be a more instructive commentary on the self-governing system of America. In this way commonwealths are crippled by statesmen who do not understand the business which they undertake, but who make the solid interests of the people subservient to their own wild and reckless schemes, or prurient notions. Under the former system of commerce that grievance could not have been produced, as, by a fundamental policy of the Crown, each colony was provided with a direct intercourse with Great Britain, and one colony was prohibited from trading through the ports of another; a wise provision, but one which Howison, in his agreeable and instructive history of Virginia, enumerates among American wrongs, appearing to forget that to that policy it was due that such enormous injuries as that of which Madison complains were not inflicted upon the people as long as their country was attached to the British throne. Before disaffected and ambitious patriots make revolutions, it would be well if they would more deeply consider the advantages resulting from the system which they desire to supplant. Had Washington been content to remain an undistinguished burgess, representing Fairfax county, and had not wearied of that obscure but useful life, if ambition had not unbalanced his strong judgment, Virginia, sitting in the shadow of her blue flag, would now be classed with the great powers, and her fleets would plough the ocean with bruised prows, visiting, it might be, the distant Orient in search of the productions of commerce, or bearing to remote seas the thunderbolts of war. The losses and inconveniences

of which Virginia complained were shared by the other states of the Union, and, to produce uniformity in their trade regulations, Congress recommended the legislatures to create a Federal jurisdiction over the import trade. But neither argument nor persuasion could induce the states to make that surrender of power. Washington, in the refusal, impatiently beheld only local jealousy; but, as experience afterwards abundantly showed, the reluctance of the states was dictated by a forethought beyond the reach of his sagacity. The states said their present experience demonstrated that the trade of a nation embraced every source of its prosperity, and warned them in the most solemn manner not to part with the final control of it. It might come to pass, they said,—a contingency to which Washington did not look,—that Congress, dominated by a selfish or sectional majority, might not be an impartial arbiter among the rival interests of the states, and might refuse, or neglect, to foster the foreign interests of a weaker section or state. Against active wrong there was always the remedy of force, but where could be found the remedy under such a government against neglect? Some public men, like Elbridge Gerry, discoursed in that vein.¹ They considered the interests of to-morrow, as well as the cares of to-day, to be objects worthy of the statesman's attention, although Doctor Franklin, the teacher of industry and individual thrift, was inculcating upon a young nation that "one to-day is worth two to-morrows."²

Then came distinctly into view the memorable States-rights and Federalist parties, whose prolonged and embittered controversy, in our day, has deluged the country in blood, a calamity which ought to instruct mankind in the nature of a government of parties—

¹ I refer to a letter of Gerry of this period, to be found in the "Life of Hamilton," by his son. He was a wary statesman.

² See Doctor Franklin's "Almanac of Poor Richard," where this apothegm is found.

hostile camps which, under the abused name of liberty, distract, divide, and ultimately enslave a nation to the military power. Public misfortune is a keen spur to thought and action, and some expedient was called for to relieve an oppressed commerce. As their mode of relief, the States-rights party proposed that the legislatures should delegate commissioners to a convention which should digest an Act to be added to the constitution which should provide for every interest. By such means it was expected uniformity of regulation would be obtained and the injuries of foreign tariffs redressed or avenged. A material point in the policy of the party, which patronized the autonomy of the states, was that the proposed cession of jurisdiction should be defined in object, and limited in duration. Fifteen years, the period of the treaties of commerce, was proposed as the term beyond which a commercial grant of Federal power was not to extend. So warily did that party approach a surrender of jurisdiction which concerned every material interest, and might determine whether a state should enjoy the prosperity to which its natural advantages entitled it, or become a withered and shrunk limb of the Confederacy, such as Virginia afterwards was made.

A political party is an important factor in a free state, and its principles are a public concern. It is, therefore, always a centre of historical interest. The political idea of the States-rights party, with reference to repairing and perfecting the constitution, was stated with eloquence and clearness by Colonel Henry and Colonel Grayson at a period somewhat later than the one of which I am writing. Those chieftains of popularity, with Mason of Gunston Hall, and Lee of Westmoreland, led that new organization in Virginia, and laid its foundations so deep and broad that its dominion, with slight reverses, has remained unshaken to this day. Those orators thus stated the principle of their party : " The only safe course, in a concern of so great

moment, is, from time to time, to correct defects in the grants of power as they make their appearance, taking care as you give power to provide safeguards against abuse. In that way the government, gradually developed and adapted to the wants of a Federal community, would, in process of time, attain a high degree of perfection. Too much suspicion may be corrected. If you give too little power to-day you may give more to-morrow, but the reverse of the proposition will not hold. If you give too much power to-day you cannot take it back to-morrow ; to-morrow will never come for that purpose. If you have the fate of other nations you will not see it. It is easier to supply deficiencies of power than take back excess of power. Keep on so, until the American character is marked with some certain features. We are too young yet to know what we are fit for. The continual migration of people from Europe, and the settlement of new countries on our western frontiers, are strong arguments against making experiments in government. Remember the advice of Montesquieu : Consider whether the government is suitable to the genius of the people."

This reads very like a discourse in one of the schools of Utopia. In accordance with that cautious and dilatory mode of amendment, it was agreed in Virginia and the other states that delegates should be sent to a commercial conference, such as assembled at Annapolis. But time is an essential ingredient in human affairs, and the gradual process by which continents and globes are constructed, it was not given to the States-rights party to imitate in developing a constitutional system. Meanwhile another revolution had been conceived, and set on foot, and would not stay its impetuous course. Events are imbued with a certain momentum which will not be arrested. If the right thing, from any cause of backwardness, is not enacted, the wrong thing will get itself done. Thus it occurred when the builders were laying a new keel in

1786. Out of commercial disaster and financial embarrassment, a new party of Federal reform had silently and powerfully formed itself, counting in its ranks Washington and others of greatest weight in the Union. It was a party that meant business, and were not disposed to hesitate in the choice of means, that the States-rights leaders might balance the scales on a nice poise between the states and the Congress. These men had resolved to preserve the Federal system from dissolution, and perpetuate the revolution which they had made, if it should require a despotism to be created at the Federal centre. They demanded, in terms which could not be mistaken, immediate and effectual reform in the government of the Union, and were prepared to throttle any opposing scheme of the adversary. The leader of that opinion said a convention of the states was necessary to do the work, and that the proposition must originate in the State Assemblies, not come from Congress. But the full extent of the proposed change was not avowed. The revolution which they meditated was kept in the background until it was ready to be sprung upon the country. The Federalist leaders moved boldly, but cautiously, towards their object. Indeed, in profession they went no further than this: that to a convention of the states every proposition of reform should be submitted, and an Act of Congress formulated as an amendment to the Articles. That was the ground on which the Federalist leaders stood before the country, in the legislatures, and in Congress—ground cautiously but firmly assumed. In explanation and defence of their plan of a convocation of the states in convention to effect reform, they said Congress, with the government on its hands, could not devote itself to such a task, but that a convention, to which every public man would be eligible, could speedily and effectually do the work. In truth such a convention, by those uncandid men, was proposed only as a committee to digest an

Act to be submitted to Congress, and, if adopted, to be referred to the legislatures ; for that party, so celebrated in American history, with the active aid of Madison and the ready sanction of Washington, was getting ready to play the country false, which very soon they did with entire success. In political circles, and in public, the arguments and phrases of that organization began to be repeated : " We will have a convention of the states to amend all ascertained defects in the constitution. The mode of ratification which the Articles require will keep innovation within safe bounds, and the state powers, in their full vigour, will be secure. There can be, then, no reasonable objection to the measure."

The controlling spirit of the Federal party was Alexander Hamilton, born in Nevis, an island of the great American Archipelago. On the side of his father he was of Scotch origin, and was sprung from the Cambuskeith branch of the noble house of Hamilton. His mother was a creole of French extraction, possessed of grace, of beauty, and intellectual culture.¹

Thus was mingled in the veins of their son the practical vigour of the North with the genius and attractiveness of the South. The boy was placed in a counting-house to learn commerce. Whilst there accident discovered his great mental endowments, and he was sent to be educated in New York, where his patrons traded. In this way Hamilton was placed on the theatre of agitation whilst the controversy waxed warm as to the constitutional right of Parliament to tax the unrepresented colonies and plantations of the Crown. His genius ripened rapidly and vigorously. Whilst yet he wore the college gown he contributed to the local press articles in defence of colonial rights, which compare favourably with the productions of his great intellect at a later period. Well born, Nature

¹ " Life of Hamilton," by his son.

had been prodigal of her favours to this extraordinary man. His bust adorns the capitol of the nation which, more than any other man, he formed and preserved. After the controversy of words had become a war of arms, he was appointed to the staff of the general-in-chief of the American armies, and now, by the verdict of history, occupies the first place in the brilliant company who composed Washington's military family during the long period of the revolution. With an intimate knowledge of his character, the young soldier soon established over the opinions of his commander an empire which followed him from the field to the cabinet, which has left enduring traces on the constitution and laws, and continued without diminution until the two were separated by death. Hamilton became a renowned lawyer and statesman in his adopted country, and by his contributions to the "Federalist" has placed himself with Jefferson as a writer. By such a judge as Chancellor Kent he is ranked in intellect high above all his cotemporaries, and, in the mastery of finance and in the strength and range of his thoughts, has been classed by Webster with the younger Pitt. Attached to no state, engaged to no locality, but eager for all honourable fame, the West Indian sought to aggrandize the power and glory of the Federal government, the patron and master whom he served. But, though he wore its livery, the Republic did not deceive his clear vision. Its divisions and animosities, with the disasters to which they tended, stood revealed to his unclouded eye. It was an organization which he accepted as a necessity of the times, but he saw, none the less clearly, its inadequacy to preserve a social or federal body from dissolution and ultimate ruin. Monarchy alone, he was persuaded, could perform that difficult task, combining wisdom with power, the essential forces of God's throne.

A letter from Hamilton to James Duane, written

from the camp at Liberty Pole in 1780, when the writer was but twenty-three years of age, is one of the most remarkable contributions to the political literature of the Union, and exerted a strong influence in the direction desired by the writer. In nervous language he states what ought to be the frame of a Federal government, with what powers it should be intrusted, and expresses the opinion which afterwards became a proverb with the Federal party, that, "A convention may agree to a constitution, the states never will." It was in that letter that he suggested, when a Federal constitution is proposed to the states for adoption, that it should be advocated by a serial paper such as the "Federalist," afterwards became vivified by his own magic pen. Hamilton kept faith with his idea, and, two years later, General Schuyler, whose daughter he had married, submitted to the legislature of New York a proposition that the other states of the Union should be invited to send deputies to a convention to meet those of New York to amend the Federal constitution. The style of the composition, the ability of the thought, and the authority of the son, prove it to have been Hamilton's work. But the time was inauspicious, and the unripe fruit fell from the bough. Undoubtedly Madison is in error when he assigns the parentage of a convention to amend the Federal system, to Pelatiah Webster. It was the offspring of Hamilton's far-seeing and vigorous mind; and when the fulness of time had come, he had the satisfaction to know that detached amendments had ceased to be urged by his party, and that, energetically and secretly, they were banded in advocacy of a convention of the states,—a states-general for America.

We will look further into the tactics of the great cabal, which had been formed for the overthrow of the State sovereignties, and the erection, on their ruins, of an absorbing central organ, that Virginia, in her sorrow and downfall, may estimate to its full ex-

tent the debt of gratitude which she owes to George Washington, and those other deified characters whose names she has been taught to syllable not without veneration and love. In 1783, in obedience to a provision of the Federal constitution, which declared that no one should be eligible as a delegate for more than three years in any term of six years, Madison was compelled to relinquish his seat in Congress. Expelled from Federal life by that ungracious decree of the Articles, he returned to Orange county, and speedily was elected to the House of Delegates of Virginia, where he proposed with better success to serve Federalism than he had done in Congress. At that period Edmund Randolph, if we accept Madison's opinion, was the most influential man in Virginia. He was the attorney-general of the state, and, in the correspondence between those industrious workers which preceded the termination of Madison's congressional term, evidence is found that a resort to the state assemblies by the leaders of Federal opinion was a policy resolved on by them as the one which promised best for the attainment of the proposed constitutional revolution. Of the date of April, 1783, Madison addresses Randolph in these words: "If a few enlightened and disinterested members would step forward in each legislature to advocate the necessary plans, I see with so much force the consideration which might be urged, that I am convinced my hopes would prevail." The connection at that critical time of those able partisans of Federalism, one in the legislature, the other in the executive government of Virginia, was productive of greatest results, for each was a master of political intrigue,—a poison as fatal to the Republic as Casca's and Brutus' steel was to Rome. In the legislature of 1784, Madison encountered men of the greatest reputation, experience, and talents to be found in the commonwealth. Each of them had been an active partisan of the late revolution

in government, and had sought those halls to devise some remedy or alleviation for the disasters which it had brought upon the misguided colonists. It was an array that would have rendered illustrious a Roman senate when Cicero and Cato were there, or a British parliament when Fox and Sheridan thundered from the tribune and Burke taught it wisdom.

Foremost amongst those orators was Patrick Henry, who could be Garrick or Burke; who spoke as Homer wrote, and was named by the British Muse Forest-born Demosthenes; but with this great difference, excellence was acquired by the Greek with infinite labour, whilst it came to the other as the song to the nightingale. In those puissant ranks was William Grayson of Prince William county, a colonel in Washington's army, a member of Congress, and a great light in those days. He died a Federal senator as soon as the new era had set in, and so is but little known or remembered in these later days. His fame belongs to the inter-lunar period of Virginian history. There, too, might be found Charles Lee, a representative from Fauquier county, and uncle to General Robert E. Lee, habitually a member of the legislature, a lawyer of great ability and reputation, and afterwards was Washington's attorney-general, along with his cousin Richard Henry Lee from Westmoreland county, the silver-tongued, whom scholars called the Virginian Cicero. Spencer Roane, and St. George Tucker, too, were members of the body, and both afterwards were judges of the Supreme Court of Appeals. Tucker, in those bustling times, had come from the Bermudas, had cast himself into the rugged arms of the revolution, had been educated at William and Mary College, and had married a daughter of the Bland family—Mrs. Randolph,—who, in the perfection of a matchless beauty, was the mother of John Randolph of Roanoke.

He, too, had come to doctor invalid Virginia, sickened

by the nostrums of the Republic. With commanding form, and serene look, John Marshall sat on those benches. In after times he was called "the great Chief Justice," and is now so distinguished among all who have worn the ermine in that Western world. The Federal constitutional jurisprudence is the birth of his learning and genius, and, from the depth of his understanding and the force of his reasoning, he is known among lawyers as "the American Stowell," the great Admiralty judge of England nothing underprized by the comparison. There were others in those halls not so widely known, silent and vigorous workers,—a class in legislative bodies who often contribute more to the utility and dispatch of business than the orators of whom the world hears so much. In the arena with those practiced champions of debate Madison was now flung. He was the son of a wealthy planter of Orange county, who had indulged all the inclinations of his son's studious nature. He had been educated at Princeton College, in the state of New Jersey, under the supervision of the celebrated Doctor Witherspoon, a learned Scotchman, who, escaping from the retired walks of learning, had helped to disunite the colonies from the parent state, and had served with reputation with his distinguished pupil in Congress. Stored with modern and ancient lore, the mind of the young statesman was trained in the gymnasium of the common law. With clear cut and convincing logic, which disdained every other appeal to the understanding, this athlete in debate at once took rank with the foremost debaters, and, by subtlest arts, delivered Virginia bound hand and foot at the Federal altar of sacrifice. He was the co-worker with Hamilton, and, in logical ability, was his equal; but Hamilton's knightly nature fought on all fields with the visor up, the midday sun streaming on his crest, whilst the other was a veiled champion who contended in the much-loved twilight. One might be Cæsar, in his scarlet robe, courting every

danger of the fight, whilst the other resembled indirect and crafty Talleyrand.¹

In those brave times, Virginia merited the fine eulogy of Calhoun. "She is like the mother of the Gracchi," he said ; "when asked for her jewels, she points to her sons." Those great men all were born and bred under the monarchy, and could not have been nurtured by the pimping politics of a republic. By efforts directed to legitimate objects they had power to have made the Cavalier's empire a mighty state in the West, but, dazzled by the cozener France, they were cursed with the satanic virtue of ambition, and so had brought ruin on their country. In that dawn and twilight of her history, Virginia, half hunter half planter, had her bounds in the west and north-west on the Mississippi and the Canadian lakes, whilst the great river Ohio, from its head-springs to its mouth, flowed mid-way through her savage domain. With an admiralty jurisdiction she went abroad on the high seas, and every breeze courted the blue flag. She had invited the states, engaged in union with her, to confer with respect to combined action for the liberation of their ocean commerce, that she might become a great maritime power, to which her ocean front, indented with harbours and bays, and intersected by deep and broad rivers, loudly called her. If she had kept clear of the ill-starred union with North section, or even then had broken from it by an annual pageant on the Chesapeake, her own Adriatic, she might have celebrated a mysterious marriage with the sea, whilst great fleets would have proceeded from her headlands to bring back the spoils of commerce to enrich and adorn many-hilled Richmond ; and no Northern soldier, except as a prisoner of war, would have set foot on her sacred soil. But the politician, with the garb of the sansculotte and the vices of the hustings, mounted the

¹ Froude's "Life of Cæsar."

vacant throne of King George, and the bright vision of empire melted into air. After one hundred years of the Republic behold Virginia now with contracted boundaries,—having scarce standing room for her capitol,—plundered, beggared, conquered, and grinding in the mill of a task-master.

“ Oh change, beyond report, thought, or belief ! ”

At first, as we remember, the politicians had flocked to Congress, but experiment taught them that was not the direction from which governmental reform must come. Quickly, and in concert, those intelligent and disciplined opponents of the states turned to the legislatures, and Virginia, with her leadership and her patronage of states rights, was selected as the point of attack. Richmond became the centre of Federal cabal. From 1784 to 1787, when the plot ripened into success, we find Madison in the House of Delegates, working for Hamilton's convention of the states as his ulterior object. He was the most complaisant and industrious of members, ready to help any man in his business, but keeping steadily in view that object—as Rives, his biographer and friend, frankly admits—“ to enlist the co-operation of his younger and abler associates in those objects of highest importance to the state and the Confederacy.” Every interest found in him a ready and practical advocate. He was placed on the leading committees, and contrived to be made chairman of the committee on commerce, which would connect him immediately and constantly with the subject of Federal amendment. The jurisdiction of that committee was thus defined by law: “ To take into consideration all matters and things relating to the trade, manufactures, and commerce of the commonwealth, to report the proceedings thereon to the House, and to recommend such improvements as, in their judgment, may be made therein.” It was arranged between the two that

Edmund Randolph, the courted and influential ally, should unite with Madison in the legislature ; but this purpose was thwarted. Still, they were active partners in the cause of Federalism. Madison, though but the deputy of a man not visible in those scenes, was the controlling mind, bending and guiding the flexible attorney-general. John Randolph, of Roanoke, who could interpret the mystic characters of human nature, has informed us that " Madison was the kept mistress of Hamilton." Behold, then, the creature of another man in the Assembly of Virginia, spider-like, involved in the labyrinth of his politics, working and conniving to undermine the state powers that he might build a throne for a Federal master, and for Virginia a conqueror. Great men often display their superiority by the exploits of their underlings. A West Indian, whose native home is not visible on a map of the world, is seen directing the councils of a great commonwealth. The light bark, which wafted the young clerk from his island home to the great continent beyond, carried Cæsar and his fortunes.

It had been arranged among the States-rights men of the Union, as has been noted, that a commercial convention should be called, Virginia, of course to be in the van, and Tyler, a leader, was intrusted with the responsible duty of introducing a Bill in the legislature for that purpose. It was proposed towards the end of the session, and adopted without opposition ; the Federalists, who were opposed to the policy of the Bill, voting for it. It stated that the purpose of such a convention was to consider how far an uniform system in commercial regulations of the states may be necessary for their interests and permanent harmony ; and to report to the several states such an Act relative to that great object, as, when unanimously ratified by them, will enable the United States in Congress effectually to provide for the same. The grant to Congress of the five per cent. duty on trade, which was the

Federalist proposition, had been defeated at that session, and this substitute was offered by the States Rights party operating on their line of action. We have here set before us the attitude of those belligerents on the theatre which they had chosen for their final conflict. We will now observe the insincere tactics of the Federal party in the legislature, under the able generalship of Madison, and learn how defeat, by skilful tactics, in politics as in war, may be turned into victory. There was not a missing nor a dissenting vote among the Federalists for the proposition of the States Rights party, their leader throwing his whole weight for the Bill. With an affected zeal for its success they insisted upon being intrusted with it, and were intrusted with it. But it was the cruel solicitude of the step-mother, who harboured the treacherous purpose to strangle the nursling committed to her care; for in his account of that transaction, Madison, with the frankness of an octogenarian, acknowledges that his party accepted Tyler's Bill as a stepping-stone to Hamilton's convention of the states,¹ or "to something better," as he expresses it. Five commissioners were appointed by the Bill, any three of whom were authorized by it to represent the state in the proposed conference of delegates, if a fuller attendance could not be obtained. Three of the commissioners attended at Annapolis, two were the Attorney-General and Madison, the third man was St. George Tucker. The mover in the business, and presumably the head man, was left out of the roll of delegates, a fact which indicated that the commercial convention had passed into the hands of its enemies. We see in this example something of the modes in which legislative bodies may be managed in a model Republic, and how "affairs of great pith and moment go awry, and lose the name of action." At this time, fortunately for the project of

¹ Introduction to the Debates of 1787.

a commercial convention, it happened that the commissioners who had been appointed by Virginia and Maryland to ascertain and establish their boundaries on the Pocomoke and Potomac rivers, had recommended to the legislature uniformity of regulation in respect to the foreign trade of the two states. It appeared that the concurrence of the states of Delaware and Pennsylvania, whose rivers flowing southward emptied their floods into the Chesapeake, would also be necessary to complete the efficacy of the arrangement. So forcible an illustration of the necessity of uniformity in trade regulations among the states could not but prove favourable to the adoption of a measure having that for an object, though in a limited degree. The commercial convention was appointed to meet at Annapolis, in the state of Maryland, the first Monday in September, which was the fourteenth day. Delegates from five states only attended, Virginia, Delaware, Pennsylvania, New Jersey, and New York, and it was urged, by the Federalist leaders, that the attendance was "too thin" to justify the convention in addressing itself to the object of its mission. Out of respect to the appointing authorities, and the important object of the mission, the convention did not adjourn from day to day, as obviously ought to have been done, but resolved at once to adjourn finally, first adopting a report from Hamilton's pen, alleging the reason for the precipitate adjournment, and recommending to the states, who had sent delegates to Annapolis, to take measures to secure a convocation of all the states at Philadelphia the 25th day of September, 1787,¹ just a twelvemonth from that time, to revise and amend the Articles of Confederation, Hamilton's great point, and for which the Federal party persistently, and now successfully, had striven.

¹ This day was changed by the Virginia Act to the second Monday of the preceding May. See *post*, p. 133.

From the page of Chief Justice Marshall we learn that deputies from the Eastern states were on the road to Annapolis, but had delayed their journey to enable Hamilton and Madison to adjourn the convention because of their non-appearance. Delegates from the states to the south of Maryland, and even from Maryland, did not attend the conference of the states as Madison suggests, (he must have known it,) because they favoured a convention of the states for general constitutional reform. It was a widespread and intricate conspiracy among the head men of the Federal party. By such means the measure, originated by the States Rights party, was converted to the purposes of the Federal party. It is worthy of notice, as confirmatory evidence, that the time and the place for calling the proposed commercial convention were not fixed in the resolution, as adopted by the Virginia legislature. Those points were left to be arranged by the commissioners who had been delegated to the commercial convention. What use Attorney-General Randolph and Madison made of so unusual a discretion to disappoint concerted action among the deputies cannot now be known, but it is probable that so favourable an opportunity was not thrown away by two such adepts in political intrigue. It is also worthy of notice that the resolution did not provide that the invitation to the other states should be sent through the Governor of Virginia, an usual mark of courtesy and respect in communications between sovereign legislative bodies, as marking the importance of the occasion. It was conspicuously true, when the Convention of 1787 was called, at the next session of the legislature, composed of the same men, and with professedly the same object, that it was particularly provided that the invitations to the states were to be sent through the Governor of Virginia, and that the time and place for the meeting of the convention were specified in the resolution—"Philadelphia" and "the

second Monday in May, 1787." The leaders of the Federal party were careful not to fall into the pit which they had digged for the States Rights party; and this, after a hundred years of oblivion or misconception is the inside of that transaction. Thus the Constitution of 1787 was conceived in a criminal fraud, begun in Richmond and consummated at Annapolis.

CHAPTER V.



TO induce the rump of a States Rights Conference such as had convened at Annapolis to adjourn, and advise the convocation of a constitutional convention, was discovered to be a task not free from difficulty. Madison, the contriver of the plot, has informed us that, in order to compass that object, it was found necessary to employ upon those commissioners the extraneous influence of "the most enlightened and influential patriots," descriptive language which was applied by him to such agents of Federal intrigue. From the proximity of Mount Vernon to Annapolis, scarce a day's ride on horseback, and the lively interest which he took in that transaction, as we learn from Marshall,¹ there cannot be a doubt but the language points particularly to General Washington. It was a critical moment in the fortunes of the Federal power, which revolutionary leaders had set in the place of the British throne and parliament. Hamilton was on the ground with his trusty lieutenants, but the presence of Washington was necessary to complete his staff and ensure the victory. Federalism represented the glory

¹ See also "Life of Edmund Randolph," by Moncure Daniel Conway.

of Washington. He had shown himself to be ready at all times to serve it in every form which it had assumed, and he was again at the call of the leaders who had taken charge of its fortunes at that crisis of its fate. To Virginia Washington was bound by the eternal obligation of natural allegiance, but he had breathed so long the atmosphere of the Union, and had become so impregnated with the opinions and purposes of Northern statesmen, that natural patriotism had died in his heart. In contemplating the greater interests of the whole, he had lost sight of the differing interests of a part of the Union. To no other cause can be attributed the fatiguing exhortations of his letters, addressed to Virginian correspondents, to bury all considerations of local policy to secure the grandeur of the Union ; nor could he be made to understand that Virginia was not under some frightful obligation to sacrifice her dearest interests to the grasping Puritan, the fetich which the blind Washington adored. That new statesmanship of the peerless Washington, the father of his country, stood in remarkable contrast with his policy in respect to the revolution when he would not consent for Virginia to pay on the tea, which she did not drink, a threepenny duty—the quiddity of which Burke spoke. In his correspondence of this period with the Marquis de la Fayette, Washington describes himself as “a philanthropist by character and a citizen of the great republic of humanity at large,” a picture without doubt true, but which disqualified him as a representative of the vital concerns of Virginia in a scuffle of conflicting interests on the national theatre, which was then being prepared for the contention. The leaders of the Federal party had proposed to themselves what appeared to be the most difficult of all tasks in a government of the people, which was to overturn a government that the people passionately desired to retain, and supersede it with one which they strongly disliked. Yet did

success reward the efforts of those adventurous characters. With a Hamilton to lead and direct, and a Washington to follow and obey, there was in their lexicon no such word as fail. The first act, or rather the prologue, was given at Annapolis when the commercial convention was massacred with Federal daggers, and we will follow the interesting, but painful, drama in its succeeding parts. It will prove, if I mistake not, an instructive portion of the Republican experiment in the New World. It will expose the very pulse of the machine.

After the commercial convention, the obstacle in Hamilton's path had been "removed," as Guiteau, the assassin, would have expressed it; the next step in the plot was to induce the legislatures to adopt the Act which those political gamesters prepared and recommended. Fortunately for the success of the conspiracy against the state powers, it happened that the legislature of Virginia was the first to assemble after the rump had dispersed. Madison and Randolph controlled its action without difficulty, for the downward current is smooth and powerful. The argument that the convention, to be held in Philadelphia, was to prepare an Act of Congress and adjourn, silenced every objection, for no man presumed to doubt at that period, when the Republic was but a bud of promise, it was before its efflorescence, that the instruction of the legislatures would be carried into effect. Madison, a master of the pen, drafted the Act of the legislature of Virginia. By its terms it was a simple power of attorney given by the commonwealth to Washington and his co-deputies to act for her in the important business of Federal amendment, the limits of their action being definitely prescribed in the power. That law is the record here, and will be submitted to the august moral tribunal which hears this case, and to which republics as well as despotic sovereigns are amenable—the trial by record being, according to the English common law,

the most authoritative, as well as the most expeditious, mode of ascertaining a judicial truth. By a unanimous vote of the legislature the statute was adopted, and its body and preamble are given here, as they are found in the Madison Papers :

“Whereas, the commissioners who assembled at Annapolis on the 14th day of September last, for the purpose of devising and reporting the means of enabling Congress to provide effectually for the commercial interests of the United States, have reported the necessity of extending the revision of the Federal system to all its defects ; and have recommended that deputies for that purpose be appointed by the several legislatures, to meet in convention in the city of Philadelphia on the second Monday of May next, a provision which seems to be preferable to a discussion of the subject in Congress, where it might be too much interrupted by the ordinary business before them, and where it would, besides, be deprived of the valuable counsel of sundry individuals, who are disqualified by the constitutions or laws of particular states, or restrained by circumstances, from a seat in that assembly.

“And whereas the general assembly of this commonwealth, taking into view the actual situation of the Confederacy, as well as reflecting on the alarming representations made from time to time by the United States in Congress, particularly in the Act of the 15th day of February last, can no longer doubt that the crisis is arrived at which the good people of America are to decide the solemn question, whether they will, by wise and magnanimous efforts, reap the just fruits of that independence which they have so gloriously acquired, and of that Union which they have cemented with so much of their common blood ; or whether, by giving way to unmanly jealousies and prejudices, or to partial and transitory interests, they will renounce the auspicious blessing prepared for them by the revo-

lution, and furnish its enemies with eventual triumph over those by whose virtue and valour it has been accomplished.

“And whereas the same noble and extended policy, and the same fraternal and affectionate sentiments which originally determined the citizens of this commonwealth to unite with their brethren of the other states in establishing a Federal government, cannot but be felt with equal force now, as motives to lay aside every inferior consideration, and to concur in such further concessions and provisions as may be necessary to the same great objects for which that government was instituted, and to render the United States as happy in peace as they have been glorious in war: Be it therefore enacted by the General Assembly of Virginia, that seven commissioners be appointed by joint ballot of both Houses of Assembly, who, or any three of them, are hereby authorized, as deputies from this commonwealth, to meet such deputies as may be authorized and appointed by other states to assemble in convention at Philadelphia, as above recommended, and join with them in devising and discussing all such alterations and further provisions as may be necessary to render the Federal constitution adequate to the exigences of the Union; and *in reporting such an Act for that purpose to the United States in Congress, as when agreed to by them, and duly confirmed by the several states, will effectually provide for the same.* And be it further enacted, that in case of the death of any of the said deputies, or of their declining their appointments, the executive is hereby authorized to supply said vacancies; and the governor is requested to transmit forthwith a copy of this Act to the United States in Congress, and to the executive of each state of the Union.”

This Act passed the two Houses of the Virginian Legislature on the 23rd of November, 1786, and deputies were appointed on the fourth day of the suc-

ceeding month. The preamble of the Act, the reader will observe, explains its object, whilst its body contains the instructions given to the deputies in respect to their action in the projected convention. If the law be scanned, the first instruction is discovered to concern the extent to which the legislature desired constitutional reform to go. That was a capital point, to be settled by the principal, not left to the inclination of the agent. The second instruction had reference to the form which the amendment was to assume, namely, "an Act of Congress." The third referred to the ratifying body, the state legislature, to which the work, when finished, should be submitted. When these points are taken together, it appears that the Act drawn by Madison was a declaration to the deputies of Virginia, and to all to whom it was officially communicated, that Virginia desired the Articles of Confederation to be retained as the government of the Union, but some needed powers added. This the form of the amendment and the mode of ratification clearly proved. The only point in which particular instructions were not inserted in the Act was as to the new powers. But the repeated solicitations of Congress to be intrusted with certain new jurisdictions, the action of the legislatures, with the understanding of the country, rendered a specification on those points unnecessary. The recent history of the country, the theme of every tongue and pen, informed every deputy on that point. An impost of five per cent. for twenty-five years; a power to regulate the trade of the Union for fifteen years; a substitution of population for a land valuation, as a measure of sectional taxation, and such changes as would fit the old work to the new, were the only alterations in the Articles deemed by the states to be necessary or desirable. The frame of the government had been attacked by no one. It was considered as perfect as the situation of the states would allow. There was another consideration to which very great

importance was attached as restraining innovation, namely, the power reserved to each state to veto the action of the convention. If we consult the statutes of Congress and the reports of committees, or the journals of state assemblies, or the contemporaneous history of Marshall, or the elegant and copious narrative of Rives, or any other source of historic truth, these propositions contain the full extent to which any authorized exponent of the public will, in any of the states, desired Federal reform to be carried. All reformers proposed to amend the Articles, all desired to retain them.

The word "necessary" found in the Act of Virginia requires this limited construction to be put upon that law. Grayson, two years later, urged this objection with great force to the Constitution of 1787. He charged a violation of trust on the Virginia deputies. "How," he said, "were the sentiments of the people before the meeting of the convention at Philadelphia? They had but one object in view. Their ideas went no further than to give the general government the five per cent. impost and the regulation of trade. When it was agitated in Congress, in committee of the whole, this was all it asked, or was deemed necessary." These were the important subjects of reform; other changes were of a subordinate character, and considerations rather of convenience. Hamilton's report, speaking for the Annapolis convention, also affords conclusive evidence in respect to this matter: "Your commissioners decline an enumeration of those national circumstances on which their opinion, respecting the propriety of a future convention, is founded; as it would be a useless intrusion of facts and observations, most of which have been frequently the subject of public discussion, and none of which can have escaped the penetration of those to whom, in this instance, they would be addressed." With this satisfactory evidence placed before him, the reader

cannot believe that it was expected that the convention, to assemble at Philadelphia, would pass beyond those bounds and construct a new government. If any doubt could exist as to so plain a proposition upon the evidence adduced, it would be removed by declarations made in the Federal convention itself, when it proceeded to overstep these limits and enter the field of constitutional revolution. As soon as it was made known that a revolution in government was contemplated in the convention, General Charles Cotesworth Pinckney, a great man from South Carolina, objected that neither the Act of Congress approving the convention, nor the commissions of the deputies (which had been submitted and read to the convention), warranted the discussion of a system laid in different principles from the existing Confederation. Pinckney was a Federalist, but Gerry, of the opposite party, concurred in that opinion, whilst Roger Sheridan, of Connecticut, also a Federalist in politics, "admitted that additional Federal powers were necessary, but he was not disposed to make too great inroads on the present constitution, as it would be inexpedient to lose every amendment by inserting such as the states would not agree to." Further on in those proceedings, Mr. Patterson, of New Jersey, more fully and more energetically spoke to that question. Washington was in the chair, become now the presiding genius of another revolution not less sinister in its origin than the first revolution. With warmth and force, Mr. Patterson inveighed against the treachery of which the convention was being guilty, with the abetment of its president, as to us it now appears. Mr. Patterson said: "He would premise, however, some remarks on the nature, structure, and powers of the convention. The convention was formed in pursuance of an Act of Congress; that this Act was restricted in several of the commissions, particularly in that of Massachusetts, which he required to be read; that the

amendment of the Confederacy was the object of all the laws and commissions on the subject; that the Articles of Confederation was the proper basis of all the proceedings of the convention; that we ought to keep within those limits, or we would be charged by our constituents with usurpation; that the people of America were sharp-sighted and not to be deceived. But the commissions under which we acted were not the only measure of our power, they were denoted also by the sentiments of the states on the subject of our deliberations. The idea of a national government, as distinguished from a Federal one, never entered the mind of any of them; and to the public we must accommodate ourselves. We have no power to go beyond the Federal scheme; and, if we had, the people are not ripe for any other. We must follow the people; the people will not follow us. He was attached strongly to the existing Confederation, in which the people choose their legislative representatives, and the legislatures their federative representatives. New Jersey would never confederate on the plan before the committee. She would be swallowed up. Mr. Patterson would rather submit to a monarch, to a despot, than to such a fate."

We know then, by evidence the most satisfactory, that a limited and specific authority was intrusted to the Federal deputies in respect to changes in the Articles of Union. We will take a survey of some of the greater points in the new system, that all may understand the slight regard paid on that occasion to the popular wish and to the instructions of the constituent bodies. The injunction from each legislature, and from the Congress to the convention, to embody all proposed amendments in an Act to be submitted to Congress, and afterwards to the states, as an additional article of the constitution, the deputies absolutely refused to obey; but instead, constructed a government *de novo*, not necessary, according to its

provisions, to be submitted to Congress for its adoption, nor requiring the unanimous sanction of the legislatures. It differed from the Confederation in species, as well as in the measure of power awarded to it. Instead of a confederation of sovereign states, as the first Articles of Union avowedly were, the new central power, which was provided for, left the states scarce a shadow of their importance. Under the first system, the states were the governing authority of the land, each moving in its orbit. Under the other, all the great powers were handed over to Congress and the new created Federal departments. This revolution in government had been prepared against the written instructions of the appointing powers. It seemed as if the legislatures and the people were treated by those trusted agents as a blind man, a fair subject for deception and sportive tricks.

When the new charter of Federal power was opened, the first change which met the eye was a division of the government into several departments. The parliamentary feature had been expunged from the constitution, and an executive branch created in the person of a president, armed with a veto on legislative action for all practical and useful purposes absolute. With the official patronage annexed to his jurisdiction, the executive was the most formidable section of the new government. Under the disguise of a misnomer, the convention had created an elective monarchy; and when Jefferson, in Paris, read the constitution, he observed, with malicious criticism, "Their president is a bad edition of a Polish king." Every prudent man foresaw that the quadrennial election of such an officer, with an immense official spoil at his disposal, would create a government of expectant and mercenary factions, whose collisions would ultimately destroy the government and the liberty it was designed to secure. Upon Congress, which that surreptitious constitution divided into two cham-

bers, the most exalted jurisdictions were conferred. Requisitions, the characteristics of a system in which the states are the sovereign parties, had been annulled, and the whole taxing power given immediately to Congress. The constitution declared: "Congress shall have power to levy and collect taxes, duties, imports, and excises, to pay the debts and provide for the common defence and general welfare of the United States." In the money power alone a revolution had been effected. When this part of the proposed government was assailed, the "Federalist," as a dubbed and panoplied knight, rushed to its defence, as to a vulnerable part of the fortress which it was charged to defend. With the candour of an advocate, it contended that, in theory, through the unlimited right to make requisitions on the states, the Confederation had conferred on Congress as unlimited a discretion as to revenue as the new constitution had done. But every man knew the old system had not worked in that way, and was not intended to work in that way, and after experiment the reverse of that conclusion had been found to be true. It was absurd to contend in the face of recent history that the power of requisition was equivalent to the power of taxation, for when a committee proposed, by a constitutional amendment, to make a requisition the equivalent of taxation, Congress declined to ask that authority from the states. If a requisition was thought to be too great in amount or of doubtful utility, or if the burden of taxation which it would necessitate would be inconvenient to the tax-payer, the power of refusal had been deposited with each legislature, and Congress, with its unlimited right of requisition, was remediless.

The unqualified right to regulate commerce with foreign nations, between the states, and with the Indian tribes, had been yielded to Congress,—a stronghold that had been defended by the States Rights party with persevering valour, and to the retention of

which the highest importance was attached. It was surrendered by a Federal garrison without firing a gun. The Sixth Article declared the subordination of the states and their character as Federal vassals: "This constitution, and the laws made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution and laws of a state to the contrary notwithstanding." To enforce that supremacy a supreme court was provided in the constitution invested with legal infallibility, to which every cause might be carried for adjudication which raised a question of constitutional law. That sovereign tribunal would be composed of a bench of lawyers, who, as politicians, might have obtained their places by acts of servility and baseness. The judges might be learned and incorrupt, but no security was offered to a state against their being of a contrary character. A more complete destruction of the autonomy of the states could not well have been devised. The rights of the states, which a seven years' war had been necessary to establish against a central domination abroad, with a stroke of the pen Washington had cancelled. The difference was that now the master of the states had been brought to dwell among them on the western side of the Atlantic Ocean instead of being planted in Middlesex on the Thames.

An important result of the written constitution, as developed in the United States under the sway of this supreme judicial body, ought not to be passed in silence in a work which considers the value of the written constitution as an instrument or mode of government, and with propriety the examination may be made in this place. That court, provided by the creating hand with discretionary powers, and thus high uplifted above the constitution, is an experiment in politics, and was the invention of the adventurous,

theorizing, dreaming American fathers. Such a constitution, regarded as a supreme law, limiting and controlling all grants of power as far as it could be done, would appear to call for, or admit, a tribunal of this kind, though none such was provided in the Articles of Confederation, nor the want of it felt or complained of, and its working, naturally, is an object of curiosity to the reader who would be acquainted with the American government as a practical system. Europe entrusts all the powers of government with an emperor under the responsibility of empire and under the strong safeguards of personal and family interests; but America, more confiding, hands it over to a bench of lawyers obtained from a corps of adventurer party politicians. In theory at least the organic law of the Republic speaks for itself, and hence the nicety, care, and exquisite criticism expended in its organization and phraseology. In the most important cases, nevertheless, the constitution is not permitted to speak for itself, the Supreme Court, with its readings and renderings, being intruded between the people and their constitution as absolute expounder of its meaning. By this means a wrong or aggressive decision becomes an authoritative example, a precedent for succeeding courts, and through this door errors and perversions, where truth is most necessary, are introduced into the state. Personal and property interests are impaled (see *Poindexter v. Greenhow*), whilst the states, which are the pillars of the constitution, are curtailed or annulled in their constitutional rights, the central power, the object to which each judge looks as a cynosure, being magnified beyond its due proportions. By such brambles and parasitical plants has the constitution, as ratified by the states in their sovereign conventions, been overrun and covered up. Many illustrations of this might be culled from the judicial history of the Constitution of 1787, but one will suffice, as, when the case occurred, the supreme bench was

occupied by judges of greatest reputation, and the waves of party politics ran high indeed, whilst the case itself was one of highest dignity and importance. I refer to the leading decision of Osborne and others against the Bank of the United States, contained in the 9th volume of Wheaton's "United States Reports," p. 738. Here the sovereign state of Ohio, by an act of her legislature, imposed a tax (it was charged with the intention of driving the bank beyond the limits of the state) on the branches of the Bank of the United States transacting business within its territory, and directed, by a statute, Mr. Osborne, the auditor, to have the tax collected on his warrant by a levy on its property, and deposited, like other public dues, in the treasury of the state. As soon as this command was obeyed by a seizure of funds of the branch bank, situated at Chillicothe, sufficient to pay the tax, the mother bank, organized and empowered by an Act of Congress, filed a Bill in Equity in the Circuit Court of the United States for the district of Ohio against the auditor who had issued the warrant, as well as against the agent who had executed it and the treasurer who had received the tax, charging all these officials as individual trespassers. In bar of a recovery the defendants sought to excuse and shelter themselves by pleading the statute of the state of Ohio and their prescribed duty under it, alleging that their act was the act of their sovereign the state, and that the bank, if entitled to redress, ought to be directed to proceed against the state of Ohio for indemnity and satisfaction. But a very stubborn obstacle interposed and evidently determined the action of the court. The eleventh amendment of the constitution, the history of which Chancellor Kent gives in his "Commentaries on the Constitution," p. 297, directed that a Federal court should not take jurisdiction of suits instituted by individuals against a state of the Union, thus placing a government of a state on the high original

ground on which it had stood, as to this exemption from suit, before the Constitution of 1787 had been formed, or before a state had entered the union which it proposed to make. If the Supreme Court should consent thus peremptorily to be ousted of a jurisdiction (a question always of doubt in a final court), the imputed wrong was remediless, a conclusion to which in that Ohio case, by any process of reasoning, that Federal court, in the inflamed state of parties, did not intend to be conducted. Moreover the case to be decided was a test case. Other states stood ready to follow the example of Ohio if prosperous in that litigation, and thus the great Federal bank, aspiring to sovereignty in the Union, would be stricken down. By that energetic action a certain array of the states was resolved to protect the political and private morals of their people from corrupt contact with that monster money corporation with outstretched Briarean arms. To sustain its darling, the national bank, in that hour of peril, the Federal party rallied all its forces: it ordered a levy *en masse*, and commissioned a Webster and a Clay to assume the chief command. In the Court of Original Jurisdiction a decision very quickly was obtained adverse to Osborne and the other defendants, and the case was appealed to the Supreme Federal Court at Washington, where it was argued for the bank by three great lawyers, Mr. John Sergeant of Philadelphia, Mr. Webster, and Mr. Clay. Thus the cause was transferred, reeking from the stews of party politics, to a judicial tribunal where political passion it was proved burned not less fiercely than in the witch's cauldron from which it had been taken. The Supreme Court, with solemn brow, upheld the suit of the bank, deciding that the agents of the state, although acting under its compulsion, were responsible as individuals, because the law of Ohio was in conflict with the Federal constitution, ignoring entirely the principle of public law recognized by every civilized

jurisprudence, that the quality of a government's mandate does not render it less effective as a shield to protect the servant who obeys it. Without that principle of immunity and irresponsibility, embedded among the first principles of public law, governments could not command the obedience of their agents and so could not continue their existence. In truth and justice, if reference be had to the facts of the case, it is obvious to every mind that Ohio ought to be the only defendant in any proceeding instituted to contest the constitutionality of her tax laws. She had caused them to be enacted, she had caused them to be executed. The eleventh amendment was evaded, and its purpose disappointed, for the arbitrary, technical, but convenient reason that the Supreme Court would not choose to recognize a state of the Union as a party to a suit at its bar unless it was "named as a party in the record." On no other ground could the wished conclusion be reached. This legal result was obtained notwithstanding the recognized principle of law that a state could not be sued, or sue, nor indeed act at all, except through an officer or agent, as afterwards, very solemnly, it was resolved by the same court, but not by the same judges, in the Virginia habeas corpus cases. Thus, by the subtlety and duplicity of the lawyer, an effective mode was devised by which a state of the Union could be controlled, or have its action arrested, by afflicting its agents with penalties, notwithstanding the authoritative eleventh amendment. This landmark of constitutional construction, with a very ostentatious parade of justice, was set up in 1824. It was followed by the Federal judges in their decisions as a fixed light, conspicuously in *Poindexter against Greenhow*, 114 United States Reports, p. 288, until the October term 1887, a long period of fifty-three years, when the Virginia habeas corpus cases inconveniently intruded in the Supreme Court for adjudication. Officers of the state of

Virginia, in a judicial process, had been held to answer for preferring to obey her statute rather than an insolent prohibitory order of a Federal judge. The proceeding involved an interesting question of personal liberty and also the far more important autonomy of the state of Virginia, but was applicable, as every man saw, to every other state of the Union. The cause excited the public attention, the eyes of the nation were turned on it. Are the states but vassals of the Supreme Court? Or are they endowed with high functions which Federal courts cannot take from them? The officers alone had been impleaded, as in the Osborne case and the Poindexter case, and there was no way by which the Supreme Judges could escape from the embarrassment except by overruling his Honour Judge Bond of the court below, who naturally had followed the Osborne and the Poindexter cases, on the ground that the proceedings which had been instituted against her officers were substantially against the state of Virginia, and only covertly and evasively against her officers, and so were within the prohibition of the eleventh amendment of the constitution. The Supreme Court in those cases, Mr. Justice Harlan alone dissenting, distinctly held that if a state be substantially and in effect interested in a controversy at its bar, it must be taken to be, within the meaning of the eleventh amendment, a party to it, though not named in the record, as earnestly, but ineffectually, had been insisted by the defendants in the Ohio case. But be it known and remembered that in the habeas corpus cases there was no United States Bank with its question of Federal supremacy, stirring the ocean to its depths, standing like proud and offended Satan at the bar of the court, but instead a band of London speculators in the coupons of the state of Virginia, whose expected gains had been endangered by a law which they sought to have nullified by the court and the common-

wealth of Virginia handed over to them to be plagued and tormented by their lawyers. No reader will feel surprised at the determined opposition of the state of Ohio to having branches of the United States Bank placed in her populous cities if he will follow the career of the bank in Senator Benton's "Thirty Years' View," until it closed in ignominy in a criminal court of Philadelphia. The state of Virginia in the habeas corpus cases, who, from the beginning, was standing at the backs of her officials sustaining them by her purse and her countenance, was represented by counsel of greatest ability and fame: Ex United States Senator Hon. Roscoe Conkling of New York, Ex United States Representative Hon. John Randolph Tucker of the Supreme Court Bar, and Col. William W. Gordon and Mr. Charles V. Meredith of the Richmond City Bar. Judge William J. Robertson of the Supreme Court Bar had declined a retainer in those cases, on account of pre-occupation with other business.¹

The objection made to the constitution in every state was that it would destroy the principle of self-government guaranteed to the states by the Confederation in subjecting them to an external authority, which practically was the subjection to a foreign power. That unanswerable objection to the constitution was in these words, as Marshall gives it, who had the argument from the leaders of the Anti-Federal or Democratic party. They said: "The representation of a particular state, not comprising the majority of the national legislature, they could not consider as a body safely representing the people; and were disposed to measure out power to it with the same sparing hand

¹ In the Appendix is the answer of the author, one of the petitioners in the habeas corpus cases, to the rule in the court below. It discusses, but more fully, the constitutional question considered in the text. The answers of my correspondents placed the defence on other grounds.

with which they would confer it on persons not chosen by themselves, nor accountable to them for its exercise, and not having any common interest with them." Edmund Burke has said that every nation has its test of liberty, and the one adopted by an Englishman is his consent given in the House of Commons to taxes to be levied on his estate. This was a formidable objection to the Constitution of 1787, and, as it touches the vitals of self-government, it is proper that it should be considered here. This principle of the British Constitution was derived from the feudal monarchy, at one period the government of Europe. In accordance with that feudal law, when taxes came to be imposed on an estate of the realm, it became entitled to representation in the government, that it might have the privilege of withholding its consent from taxes.¹

The House of Commons originated in that principle, and it supplied a slogan for the American revolution.

When North America was settled by British colonists that feudal idea migrated with them, and rooted itself in the convictions of the people—twin-born taxation and representation. But, when a malignant planet was in the ascendant, and men were given over to madness and folly, Parliament enacted the Stamp Law, in violation of that fundamental right of every Englishman, whether he lived in Middlesex, or dwelt in the tobacco fields and rice swamps of Virginia and Carolina. The constitutionality of the law was vigorously assailed, and it was repealed. It was proposed to accommodate the difference by allowing Parliament to tax the colonies, first granting a representation to the Americans in the House of Commons; but the Americans still objected, saying: "We will not accept a minority representation in Parliament, such as had been awarded South section by the new con-

¹ Introduction to Robertson's "Charles the Fifth."

stitution, where we will be in a defenceless condition. What we assert to be our constitutional right as Englishmen is to be taxed only by our own legislatures, where we have a beneficial representation. A minority representation would be only a hostage of obedience. Burke treats the proposition of an American representation as suitable only for ridicule. Until the period of the Stamp Act, which marked the change in the colonial policy, the colonies, except as to their external trade, had exercised substantially the powers of self-government. When the new constitution was submitted to the states for consideration, Mr. Henry, and such of the people as remembered the old ground of quarrel, objected that it embraced Galloway's old proposal of a minority representation for a state, but applied to an American Congress instead of to a British Parliament, but that the scheme was not more palatable by having the legislature brought to New York instead of being left in London. Professional men in all the states, and particularly the lawyers, who desired, at any cost, a settled government, on account of the prosperity of their business, became zealous advocates of the new Federal plan.¹ They were named the "Illuminati" by the Anti-Federal orators, and the name communicated itself to the party to which they were attached. The "Illuminati" might consider such a system Republican government because it conferred the form of elective power, but it was not self-government, for, when we come to the result, the people of a state, in their most important concerns, were to be governed by masses of voters not dwelling among them, nor interested in their good government. The sum of the matter was, after thirteen years of self-government, the politicians had grown tired of the system, which paid them

¹ "Debates in the Ratifying Convention of Massachusetts," Elliot's Debates.

nothing, and proposed to abolish it. In Virginia an additional battery was opened on the constitution, which was not silenced until Lee furled "the conquered banner" at Appomattox Courthouse. The constitution, it was urged, would create a legislative despotism of the North over the South; for a minority representation, where there are peculiar interests to be protected, is as accepted a badge of vassalage as Gurth's collar. It was asserted, by those assailants of the proposed constitution, that if the new instrument of government be examined it would be found to establish an external domination over the South more grievous than that which was proposed by Lord North's administration over the North American colonies. This examination will be instituted here, for truth and justice rejoice to be vindicated in the field of reason after their overthrow by armies.

The first Article of the Constitution, by an arbitrary decree, fixed the representation which it allotted to each section of the states in the House of Representatives of Congress, and also, that each state should have two senators, whilst the second article declared that the weight of each state in the College of Electors, which was to choose the President and Vice-President, should be equal to its combined strength in the two Houses of Congress. The section is good reading for the man who would comprehend the contrivance by which disobedient Federal deputies, under the lead of George Washington, converted a confederacy of sovereign states, where equality reigned, into a despotism of sections, which he, the patriot, recommended to Virginia—we shall see more about this a little later—as a plan of liberty and national life: "Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound

to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made three years after the first meeting of the Congress of the United States, and within every subsequent ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative, and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.”¹

The framers of the constitution, as a base, admitted in their political calculations that the Union was divided into two sections of states, discriminated by different civilizations and opposing legislative interests, and conceded that these were permanent divisions in the Federal nation. It was recognized by them that Maryland, and the states to the southward of Maryland, composed the planting or slave-holding section, whilst the states to the northward were the farming or free soil section. Thus the slave border coincided with the geographical line marked on the maps of the Union as Mason's and Dixon's line. This division of the states gave a majority of seven votes in the House of Representatives, six votes in the Senate, and a corresponding superiority in the Electoral College to North section. Further on will be explained the theory, conjecture, or hope by which some of the states in the South section, or rather their deputies in the Federal Convention, were induced to believe that Federal power, after a short period, would be taken from the North and yielded in perpetuity to

¹ Constitution Article I. section 2.

the South ; or that an equilibrium of power, resting on the fluctuating base of population, would be maintained between the two rivals for Federal empire. But the fact, without explanation, was printed on the face of the constitution that a government had been formed in Philadelphia, with the consent of Washington, which established over the South section a despotic executive and legislative authority. As President of the Convention General Washington had signed the constitution, and as a deputy had voted for it, yet when he had done so, he informed Lafayette that it contained so much objectionable matter that he would have nothing further to do with it, but leave it, "as a child of fortune," to its fate, a comfortable reflection for conquered Virginia. But Washington did not abide by that determination, he did not leave the child of fortune to the buffetings of fate, but took an active and pernicious part in determining its destiny. The Federalists were hard pressed in their contest over the constitution. Henry flamed over the field, eclipsing his own fame in that great debate, and the Lord of Gunston Hall, with brightest scimeter, fought by his side, for Virginia was the field on which the victory for the constitution was won. But the day was lost unless the reserve at Mount Vernon could be brought into the fight. The commanding general clearly understood that. So the Achilles of Federalism was induced to assume his armour of popularity, and, instead of a cautious neutral, became the most intolerant advocate of the constitution, or "new form," as he treacherously called it. So excited became the contest in which Washington engaged, that he quarrelled about the constitution with his friend and neighbour of Gunston Hall—quarrelled with him because he too would not become Hamilton's henchman, and wear the swine-herd's collar. In our next chapter we will see something more of this world's hero in the rôle of a politician, and the methods which he sanc-

tioned to obtain, by the Virginia Convention, a ratification of the constitution contrary to the wishes of the majority expressed at the polls, and which has fixed so grievous a yoke on her neck. At the bottom of his heart Washington felt a superior scorn for the people which that act proved. He had a saying: "The people cannot see, but they can feel."¹

But he erred, for the least enlightened voter of Virginia understood well enough that, if that constitution were ratified, self-government would be lost, and the whole South subside into a tributary and province of the North section. Virginia was not more deceived a hundred years ago than she is deceived now, after she has been crucified by the soldier, and fed with vinegar and hyssop. One of the arguments, to which the "Illuminati" attached great importance, for producing a more intimate union between the sections, was that it would protect the opulent and exposed South from incursions by Northern hordes, ready to break over the border, or swarm on river and bay, that they might gather the golden harvest, or bear off fair Helen. The stories of effete Rome and of old Troy were to be repeated in Carolina and Virginia, whose soft climate invited to repose amid the carol of birds.² But those prophets of misfortune did not understand the martial breed in their midst, not yet hardened into manhood, for the red star of Stonewall Jackson had not yet risen. Those theorists and men of books did not know that in the womb of slavery, the African mother and nurse, there would be conceived a nation of fair warriors to restrain whom statesmanship in the West would be compelled to invent balances of power. To illustrate the blindness of the "Illuminati," a picture is given taken from the war of the sections.

An officer in the uniform of the Southern army,

¹ Letter to General Putnam. ² Madison's Correspondence.

with an escort of cavalry, occupied a position which commanded the bay formed at City Point by the union of Appomattox and James Rivers. In sight was Causon, the birthplace of John Randolph of Roanoke, City Point lay to the right, and below a Federal armada was at anchor, in its progress towards Richmond, whilst General Butler's co-operative army of thirty thousand men was camped on the southern shore. The officer had known of that famous argument for the more intimate Union which the Constitution of 1787 had effected. As he gazed upon the military spectacle, he bitterly reflected: "This avalanche of war was prepared for Virginia by the sagacity or patriotism of George Washington. The incursion from the North has come by land and flood, but now armed with Federal power, and South section is called to breast it without a recognized nationality; without an ally; without an arsenal; without a navy; without an army; or, with such an army as undisciplined valour provides. If French and American politicians had allowed the sections to remain under the British dominion, or had they continued, as under the Articles of Confederation, in the fulness of time they would have become independent powers, allies and helpers it might be in civilizing the great West; but those evil genii have made them enemies, and they are met here to-day to do murder on each other."

After the constitution had been signed by the deputies present, except Gerry from Massachusetts and Randolph and Mason from Virginia, who withheld the sanction of their names, the convention adjourned on the 17th day of September, in the twelfth year of the independence of the United States, having been in session three months and five days, a period not more than sufficient to enable a woodman to construct his hut.¹ Yet, in that brief period, the leaders

¹ Madison's "Debates of the Convention," vol. iii. Such is

of the Federal party, sitting under lock and key, "had effected," Mr. Henry said, "as great a revolution as that which separated the colonies from the mother country," and had done it under circumstances, he might have added, which teach a memorable lesson to mankind in respect to the trust to be reposed in the political deputies of a republic. We have not yet become acquainted with the force which the Federalist politicians employed to accomplish that radical change in government, and it will be interesting to discover the leverage by which, so easily and so quickly, they overthrew the Confederation. It is a conspicuous feature in that revolution in government that a new ratifying authority was called into existence, and it was understood by the convention to be necessary to crown with success their conspiracy against the states. The ratification was to be by a convention to be held in each state, which would be no nearer the people certainly than a legislature, yet having this advantage, that, after adjournment, the existence of a convention would be terminated, which would make it as irresponsible to the electors as is an English or American jury after disbandment. But the precautions by which, in cases of capital importance, juries are surrounded to protect them from sinister influences, were not employed to guard those conventions. Although exercising the greatest sovereign powers, their members were exposed to all the seductive influences which could be brought to bear upon those fugitive

Madison's statement, but we know many deputies *not present* did not sign the constitution. It is one of his customary evasions, the *suggestio falsi*, that all the deputies signed but the three mentioned. Mr. Moncure Daniel Conway, author of a valuable and scholarly "Life of Edmund Randolph," recently published by Putnam Sons, New York, states this point well in his tenth chapter: "Of the fifty-five members who sat in the convention, the names of but thirty-nine were attached to the constitution. Of the other sixteen, three only remained to the end, and among these was Randolph."

elements. In this way a particular interest might be created in the breast of a member of a convention which would outweigh, when he came to vote, that general and speculative interest which a man of honour feels in performing a public duty. With a state legislature it was different. A legislature was a government, and had all the pride and jealousy which are imparted by the possession of habitual and permanent authority, of the force of which we have seen, in the course of this examination, many striking instances.

The legislatures were the chosen depositaries of the power of the people. By them the states were governed, by them the general government had been set up and was operated. It will be asked whence did the convention derive a semblance of right to conspire against their importance? It is evident the power was usurped. From his correspondence with Randolph it appears that Madison suggested that piece of legerdemain, and it constitutes some reason for calling him, as his admirers do, the father of the constitution. But they were bold gamesters. If nine states only could be prevailed upon to accept the new Federal arrangement, there would be created, within the circumference of the Confederacy, two Unions. War might have resulted, one being an intruder upon the unquestionable jurisdiction of the other. That was one chance which the revolutionary conclave accepted. As the voters who elected the legislatures were the body of citizens who would elect the ratifying convention, why, we may inquire, did the Federal leaders expect a better verdict for their new system with the latter than the former? To answer this question satisfactorily it is necessary to sink the shaft deeper in this investigation, and bring into view the force which produced a ratification of the Constitution of 1787.

The first clause of the Sixth Article of that constitution was couched in these words: "All the debts

contracted and engagements entered into before the adoption of this constitution shall be as valid against the United States, under this constitution, as under the Confederation." It was upon the public creditors, a body of mercenaries, a corps of free companions, taken into the service of the new constitution, that the leaders of the Federal party relied for victory in that field of popular self-government. It was an irresistible force when directed against temporary bodies of elected delegates impoverished by bad government and the calamities of a long war.

The grand committee of the Congress of the Confederation was composed of a member from each state. It spoke with an authority not awarded to other committees. On the 8th of April, 1783, that committee, charged with the consideration of the Federal finances, reported the foreign debt of the Union to amount to \$7,885,087, the domestic debt to \$28,615,294, and the interest on the two sums to \$2,362,320; which, in the general statement of the public indebtedness, was lumped at \$40,000,000. But this aggregate did not include the unascertained amounts, with the attaching interest, expended by the states in their own defence, the interest to be turned into principal, which Congress had recognized as fairly a charge on the Federal treasury; nor does it present to the mind the national debt in 1789, as stated by Secretary Hamilton, not diminished in amount, we may be sure, by the estimates of politicians who advocated the constitution which was to pay it. I give an extract from the report of Hamilton, become superintendent of finance under the new *regime*, that the gigantic bribe may be set before us which a political party offered to a free people about to exercise the most delicate function of their system. The Honourable Secretary says:¹ "The result of the foregoing discussions is this: that

¹ "Annals of Congress," vol. ii. p. 2,004.

there ought to be no discrimination between the original holders of the debt and the present possessors by purchase ; that it is expedient that there should be an assumption of the state debts by the Union, and the arrearages of interest should be provided for on an equal footing with the principal. The next inquiry in order, towards determining the nature of a proper provision, respects the quantum of the debt, and the present rates of interest. The debt of the Union is distinguishable into foreign and domestic :—

The foreign debt	
amounts to principal	\$10,070,307.00
Bearing an interest of four and partly an interest of five per cent.	
Arrears of interest to the last of December, 1789	\$1,640,071.62
	<hr/>
Making together	\$11,710,378.62
The domestic debt may be subdivided into liquidated and unliquidated principal and interest.	
The principal of the liquidated part amounts to	\$27,383,917.74
Bearing an interest of six per cent., the arrears of interest to the end of 1790 amount to	\$13,030,168.20
	<hr/>
Making together	\$40,144,085.94

This includes all that has been paid in indents (except what has come into the treasury of the United States)—which in the opinion of the secretary can be considered in no other light than as interest due.

The unliquidated part of the domestic debt, which consists chiefly of the continental bills of credit, is not ascertained, but may be estimated at . . . \$2,000,000.00

The several sums constitute the whole of the debts of the United States, amounting together to \$54,124,464.56

That of the individual states is not equally well ascertained. The secretary, however, presumes that the total amount may be safely stated at twenty-five millions of dollars, principal and interest. The present rate of interest of the state debt is,

in general, the same with that of the domestic debt of the Union. On the supposition that the arrears of interest ought to be provided for on the same terms with the principal, the amount of the annual interest, which, at the existing rates, would be payable on the entire mass of the public debt, would be on the foreign, computing the interest on the principal as it stands, and allowing four per cent. on the arrears of interest .

\$542,599.66

On the domestic debt including that of the states . . .

\$4,044,845.15

Making together \$4,587,444.81

We have placed before us the bribe, offered by the convention for the ratification of a surreptitious constitution, increased to eighty million dollars, as it became by the time the first installment of interest was paid, accompanied by more than four and a half millions to be poured each year, as interest, into the lap of North section, occupied, if we accept Washington's estimate of that people, by the most mercenary

population to be found in any age or country. We gather from the Congressional Debates, that as the prospect of ratification grew brighter, Northern speculators had been employed in buying the foreign debt at a discount, as they had been in gathering into their pockets the evidences of Federal debt scattered through the rural districts of South section.¹ The statement then is scarcely too strong that the interest of the Federal debt was paid to Northern holders. Who is surprised that ratification triumphed, or that North section should have sought to control the government for its exclusive benefit, which its merchants and bankers had bought in open market? Ratification would give life to a government desirous to pay that huge sum, and endowed with every capacity to do so. It would turn a worthless mass of Federal indebtedness into gold and silver coin, or government securities having an equal value with it. Aladdin's lamp did not create a more boundless and sudden wealth, and we are not surprised that the children's children of the nation that received it should venerate Washington and erect statues and monuments to his memory. Over all obstacles and arguments that reason or patriotism could interpose, the eighty millions carried the constitution on its shoulders as the giant of Israel bore off the gates of Gaza, and it had power, by the purchased votes of those conventions, to have planted in America the worst despotism that ever cursed the East. The capitalist with his balances governs the Union to-day, as wealth dominates in representative government wherever it is established. It is only when it copes with monarchy that its sceptre is broken and its nerves paralysed. That organization of power alone has capacity to resist the seductive

¹ Henry informs us that in the North and East the evidences of the Federal debt were "barrelled up," and that agents were then collecting it in South section at a discount which a Shylock might have envied.

influence. This advantage mankind will be quick to discover, and monarchy will stand on a foundation of adamant when the Republic is remembered as a superstition.¹

There is no principle of public law or morality more universally admitted than that a change of government does not invalidate the public obligations.² Debts are due by the nation, and the first clause of the Sixth Article was inserted in the new constitution not to bind the debtor, but to assure the creditor that his

¹ The position taken in the text is fortified by an example found in a letter to the London "Times" of the date of February 4, 1887, from "An Occasional Correspondent," writing from St. Petersburg. Says the correspondent: "Of one thing there can be little doubt, and that is certainly the Czar's tenacity of opinion and purpose. Both the Afghan frontier and Bulgarian questions have borne witness to this quality. Even Prince Bismarck the other day admitted that the Czar had the courage of his opinions; and this has lately been verified in home concerns as well as in foreign policy. For instance, a great agitation was got up a few months ago through the Ministry of Finance by the sugar manufacturers, who are half ruined by the over-production of the large refiners, stimulated by bounties and other privileges, in order to obtain a government measure reducing and regulating this production so as to enable them to pull through the crisis. Although strongly advocated by the Minister of Finance, the "Moscow Gazette" brought its powerful arguments, and M. Katkoff his most influential machinery, to bear against the proposal, and succeeded in carrying the day. Strange stories are rife as to M. Karitonovitch, the sugar king, who recently sent General Sausier, at Paris, a Slavonic loving-cup for his philo-Russian speech, and other individuals; but this matter needs no reference here. The main point is, that when the question came to be discussed by the Imperial Council, an overwhelming majority of the members were in favour of the proposal, but the Emperor, receiving their recommendation, decided with a minority of five against it. The same happened with the Caucasian free transit question, when the Czar adopted the view of a minority of his advisers, even in opposition to the vote of his favourite uncle, the Grand Duke Michael, late Viceroy of the Caucasus, and prepared the way for the suppression of the free port of Batoum. It was contended by many persons that such

² Vattel's "Law of Nations."

debt would be immediately and handsomely provided for to the extent to which it had been acknowledged, with the accumulations of interest, if ratification could be carried through. As soon as the Federal party had struck hands with the creditor the victory was assured, and a fawning suitor transformed into an insolent dictator. Through that twelve months' canvass, now in this state, now in that, that great bribe blazed in the forehead of the constitution like a headlight in

procedure threw discredit on the wisdom and dignity of the Council, seeing that the members of this high assembly do not consider themselves called upon to resign in such a case as in countries where the majority makes the law. What is the good of a council if its advice is not listened to? But such are the ways of autocratic governments. But for all that, many fairly impartial critics maintain that in both cases the Emperor was right, and that at least he had the courage to act up to his opinion in spite of majorities."

This interior view of the Russian administration, so suddenly revealed to us, presents one of the most striking attitudes in history—an emperor and an autocrat standing immovable by the interest of the people, concerned for cheap sugar, against a conspiracy of capitalists wanting high-priced sugar. In the Republic, the sugar king would have had it all his own way, and the manufacturers would have filled the Lobby of Congress, each with a money-bag under his cloak. The example reminds an American of the days of Old Hickory, when the Cabinet often would advise one way and President Jackson would decide the other. Andrew Jackson would have made a great Cæsar, as he was the greatest of American Presidents. His memorable contest with the money-monster, the bank, which aspired to rule the government, shows that. According to Lord Macaulay, and the fact is indisputable, the King of France, Louis XIV., kept the orators of the House of Commons in his pay as systematically as ever did King Philip those of Athens. When Washington so earnestly, in his farewell address, warns his countrymen against foreign influence, he means the influence of foreign gold, of which the patriots of Boston had had a taste, as he well knew. The gods of gold are the deities of the Republic, and crowd its Pantheon. Englishmen admit, at least so the "Times" stated in 1867, that a great value which attached to the House of Peers was, that it rendered Parliament unpurchaseable by the wealthy corporations which solicit its favours.

the gloom of night. If all other adverse influences were removed, "the gods of gold" would render the Republic impossible as a permanent or desirable form of government.

But a horrible shadow, a goblin damned, was ever standing with menacing gestures before the chieftains of the Federal party. It attended them at the market, it followed them to the council, it sat with them at the feast, it oppressed their slumbers, it darkened the sunlight—the dread of counter-revolution. As frequently before intimated in these pages, indeed charged, the revolution had been a fraud on the people of the colonies, concocted between the French premier and the American revolutionary chiefs. Loud-mouthed discontent, wafted on every breeze, informed the conspirators that the deception had been discovered. It will be remembered that Governor Randolph of Virginia explained to the Federal convention, as an apology for the national government proposed by him as a substitute for the Articles, that a strong central government was necessary to make sure the revolution, and that the explanation was accepted as satisfactory by that assembly of Federalists sitting in conclave. So with general approbation the old constitution was put into the cauldron, and, amid the incantations and sorceries of those necromancers, a new body was taken out. Old Æson came forth a smiling Apollo. An inspection of that roster will disclose the fact that the convention was composed of the men who had been foremost in making the revolution. Washington was the president, Franklin stood next to Washington, then came Robert Morris, "the financier of the revolution," and the rest of the body followed in order, composed of prominent revolutionists. The conspirators were met again on the classic ground of treason, but now to organize a national authority strong enough to secure the prize which they had won with the aid of the French army and navy. Daylight

had broken upon the disturbed waters, and had revealed to those mariners that their bark had drifted among the breakers. They had conquered with the sword, it was necessary now to conquer with the law. The Republic had been false to all its promises, was verging on anarchy, and the revolution was threatened with counter-revolution. Strenuous and immediate action alone could avert the catastrophe. The dark conclave, with its energetic president, remembered that Federalism had produced the revolution, and now they looked to their patron saint to preserve it. By a bold and successful fraud a convention of the States Rights party, assembled at Annapolis, had been converted to their purposes, and the conspirators found themselves a convoked constitutional convention, whose liberty of action was restrained only by the instruction of absent legislatures and by moral scruples, which appeared frivolous to men hanging on the brink of counter-revolution. With a leader endowed with boldness and the highest gifts of intellect, sustained by a corps of able and obedient followers, wildest hopes might be realized.

The Franco-American revolution had not produced the promised Elysium. The assurances of Thomas Paine, the infidel philosopher who had been brought to America by the cabal to write up the revolution with his trenchant and brilliant pen, that all the evils of society were produced by kingship, had lost, notwithstanding the applauses of Washington, their hold on the public mind, nor were the people compensated for their misfortunes by the stately eloquence of the Declaration of Independence an exaggerated fiction written by another infidel philosopher.¹ Jefferson had

¹ The following letter from Jefferson, then a member of the Continental Congress, to Sir John Randolph of Virginia, a refugee in England from the revolution, dated August 25, 1775, contrasts finely with its contemporary, the Declaration of Independence: "If indeed Great Britain disjoined from her colonies be a match

seriously informed them that George III. was a king to be described by all the characteristics of a tyrant. But they now remembered with regret that they had enjoyed prosperity and happiness under their old master, when Washington planted tobacco on the banks of Potomac, or earlier, when he was a bold hunter at Greenway Court, and surveyor of the Northern Neck, attached to the household of Lord Fairfax and moving in his train. That was before Washington had come to be proprietor of Mount Vernon; before he had married into the aristocracy of the colony; before he had been sent a burgess to Williamsburg, where he had learned to talk rebel politics. Independence had brought nothing but hard times, and, during that morning hour of the Republic, indications were not wanting in the states that even the social edifice might give way. The man who toiled had begun to question with his neighbour whether the pennyworth duty on tea, to which all grievances had been reduced,¹ which was used by townsfolk and wealthy planters, but was never seen at the farmer's or poor man's board, was compensation for the cruel privations which they had been made to suffer on account of it?² They had begun to take counsel

for the most potent nations of Europe, with the colonies thrown into the scale, they may go on securely. But if they are not assured of this it would be certainly unwise, by trying the event of another campaign, to risk our accepting foreign aid, which may perhaps not be attainable but on condition of everlasting evulsion from Great Britain. This would be thought a hard condition for those who still wish for reunion with their parent country. I am sincerely one of those who would rather be in dependence upon Great Britain properly limited than on any nation upon earth, or than on no nation."

This letter may be found in "Lee's Remarks on Jefferson," pp. 226, 227. For an interesting account of Sir John Randolph, see Mr. Conway's "Life of Edmund Randolph," published by Putnam's Sons, New York.

¹ See "Marshall's Washington," first edition.

² When Colonel Pickett returned to Fauquier, he presented a

whether it would not be better to disband these fine new sovereignties, which the state legislatures could do, and return to the British allegiance, trusting to such a charter as Lord Howe had offered, or more recently King and Parliament had proposed, along with a full redress of all grievances of which they had complained. Charters were the solid foundation of British liberty, and they could be made a solid foundation of American rights. It was clear that the Republic had failed to produce anything but disasters, and of these there had been a plentiful crop. Shay's rebellion in Massachusetts had been suppressed chiefly by a meditated Federal intervention, but not before a returning loyalty had gleamed forth. The sentiment boldly uttered by the rebels of Massachusetts found ready response in other parts of the Union, particularly Virginia, where, as we know, the revolution had been carried by foul means. The Union was in a volcanic state, and anarchy was preparing to unfurl his crimson banner. "The flames of internal insurrection are ready to burst out in every quarter. From one end to the other of the continent we walk on ashes concealing fire beneath our feet." Thus spoke James Wilson of Pennsylvania, as, with unblest feet, he walked over the burning marl. Washington's correspondence, though expurgated and altered by Jared Sparks, a repository of valuable facts, supplies another picture of those distressful times. Colonel Henry Lee, known to posterity as "Light Horse Harry," a brilliant figure of the revolution, and as conspicuous for intellect as for martial courage, had been sent to the theatre of strife and discord, and thus reports to Washington: "A majority of the people of Massachusetts are in opposition to the government. Some of the leaders avow the subversion of it to be their object, together with the abolition of debts, the package of tea to Farmer John Martin Porter, a zealous partizan of the revolution. Farmer John naturally turned it over to his wife, who boiled the tea with a flitch of bacon !

division of property, and a reunion with Great Britain. In all the Eastern states the same temper prevails, more or less, and will openly break forth whenever the opportune moment may arrive. The malcontents are in close connection with Vermont, and that district, it is believed, is in negotiation with the government at Canada. In one word my dear General, we are all in dire apprehension that a beginning of anarchy is made, and we have no means to stop the dreadful work." With a master's hand Washington adds another touch to the picture: "There are combustibles in every state to which a spark might set fire."

The rebellion of the majority in Massachusetts against the Republic was suppressed by the sword. After its brief domiciliation in a Republic already liberty had lost something of its inherent privileges, for whilst it possessed an inalienable right, at pleasure, to secede from the British Empire, it had not an inalienable right, at the wish of the majority, to return to it. It was evident to every mind that the revolution had proved a deplorable failure, and the people were looking to a renewal of the old connection to restore prosperity to their distressed country and families. An unselfish and wise Washington would have indulged the colonists in their fond wishes. That was not too disinterested a part for the nature of man, for among the opponents of the new constitution were many great men who, recovered from the illusion of the Republic, were aiming at that result. But Washington was made of the stuff of which the conquering general is formed, and a strong selfishness was the base of his character. His own fame, or "character" as he called it, was the paramount object with him from the time when he retired from the King's army on a frivolous question of military etiquette, to the end of his laborious and brilliant career. He possessed an immense force of character, united with an executive capacity rarely equalled, and he con-

trolled, by an iron will, all who were brought within the sphere of his influence, except his wife, whom he cherished with a tenderness and love that exalted a hero. Even the sons of light, as they gathered about him to fashion and temper his political opinions, confessed the awe he inspired. Undoubtedly Washington was an able general. The cast of his character was altogether military, and he was never so much in his element as when among his soldiers. But he was a blind statesman, and the condition in which he found Virginia, and that in which he left her, sustains that opinion. He found her, when he grew to man's estate, a feeble colony, whose settlements were driven by the French and Indians within the barrier of the Blue Ridge Mountains, yet having a great unoccupied territory defined by recognized boundaries and guaranteed by a great monarchy. That undeveloped colony, with a mixed population of free men and slaves, he took from the protection of a fostering government, on a pretext of grievances, and created a powerful nation on its borders with a claim to its obedience. When he died, that power, that nation which he had established, under the false pretence of an Indian title, had wrenched from Virginia the greater part of her unoccupied domain, and, as an act of grace, had allowed the Virginian boundary to extend as far west as the Ohio River, instead of being limited by the Alleghany Ridge, according to the pretension of Congress standing on its Indian title.¹ But the fame of Washington was identified with the revolution, and that in turn with the Union. It represented the heroic part of his life. So he called his lieutenants around him and took measures to fasten the revolu-

¹ Madison's Correspondence with Jefferson, and his Debates in Congress, to be found in the Madison Papers, and Rives' "Life of Madison." See particularly the tenacious part which the Scotchman Wilson plays in the controversy.

tion on a reluctant, dissatisfied people. According to the common authorities, Shay's rebellion exerted a determining force in producing the present government with its consolidating tendencies.¹ Whilst at the Court of France, in curt, but homely language, Jefferson remarked: "Shay has induced the convention to set up a kite to keep the hen-yard in order"; and the South section felt his beak and talons.

Amid all domestic embarrassments Washington had but one remedy—more Federalism. Strafford had not a stronger faith in "Thorough," and the leader of the revolution thus responds to Colonel Lee: "You talk, my good sir, of employing influence to appease the present discontents in Massachusetts. Influence is not government. Let us have a government by which our lives, liberties, and properties may be secured; or let us know the worst at once. There is a call for a decision. Let the reins of government be braced and held with a firm hand." In this letter was the germ of the Constitution of 1787. Washington, as well as the other heads of the Federal party, was convinced that the English feeling might, at any time, gain the ascendant in a state legislature, and express itself by determinate action. He well remembered, and in no wise forgot, that an elective body in Virginia, called a convention, had, without the slightest authority from the people, withdrawn the colony from the British jurisdiction, and the act might be repeated with respect to the American Union. The thinking men of the Federal party understood well enough what the dissolution of the Union, and the formation of partial confederacies, suddenly become so popular, signified. Governor Clinton recommended that New York should form a separate Union with neighbouring New England, and Henry, representing a mass of Southern opinion, openly favoured a Southern Confederacy. They knew Henry to be a man of too

¹ This was Jefferson's notion, but he was abroad unfortunately.

large a brain to contemplate, except provisionally, a Southern slaveholding Union, at that time not strong enough to cope with the buccaneers within its own headlands; nor could Governor Clinton's scheme, viewed in connection with the obstacles which he had thrown in the way of constitutional amendment, bear any other construction. On every hand were to be found unmistakeable indications which showed the drift of the popular sentiment, and the purpose of the men who were guiding it. If the movement were encouraged by the promises and smiles of the British Court, the revolutionary *regime* might dissolve in a day, and the cloud-built tower of the Union disappear. It was evident that the Confederacy would not bind the states to the revolution, and the Federalists were determined to make a central government that would have power to effect that object.

After trying politician government and finding it a snare, the wish of a deluded and misguided people, to abandon it, and revive the British connection, is an obscure but indisputable part of American history. The truth has been darkened and covered over by the partisans of the revolution, but is susceptible of satisfactory proof. Madison's letters to Randolph establish the existence of such a party in the East, in the North, and in Virginia, whilst it is known that in South Carolina the Tory party was still greatly in the ascendant. The "Life of Hamilton," by his son, a valuable work for its voluminous information, as well as for ability and candour, affords evidence that the representatives of the English sentiment had left the retirement into which they had slunk, hoping, as the result of politician reign, a re-annexation of the American colonies to the parent state, where stability and prosperity might again be enjoyed. As we learn from the writings of Washington, the Tories, in the outset of the American troubles, had held aloof from all political connections, fearing to be compromised by them,

and believing the royal authority to be strong enough to sustain itself; but later in the struggle they were found in the legislatures and in Congress, often serving on important committees. It was this party of the majority, inflaming all discontents, and obstructing by force of its numbers every measure of constitutional reform, that the Federalists determined to disarm and silence by creating an absorbing central power to be ratified by conventions exercising the popular sovereignty. "*Per fas aut per nefas*," appears to have been the maxim of the Hamiltonian Federalist, a dangerous principle to animate a political party having the reality of great intellect with the exterior of patriotism and honour. Many of the leaders of the revolution, convinced already of the impracticable nature of Republican government, attached themselves to this powerful interest, between whom and the States Rights party the strongest sympathy existed. The parties were united by a common enmity, and, in politics, hatred is stronger than love. The Tory party then were the active partisans of every interest which would thwart the Federalists, seeking to subordinate the South to the North. Their first step was to defeat constitutional reform, which would invigorate Congress; their next was to break the Union into partial confederacies, which would be an open door to England and their former prosperity. This was "the purpose" to which, in his letter to Randolph, Madison darkly alludes as governing the politics of the great orator. Belligerent interests showed themselves everywhere within the pale of the Union, getting ready as soon as a theatre was prepared to struggle for mastery, whilst smothered enmity and distrust between North section and South section indicated them as distinct nations, whom it would be gross error in politics to embrace by the same authority, unless it were composed as the anomalous British Empire, where all diversities were tolerated in its detached and

multiform parts. To prevent that threatened revolt of the people against the revolution, become the foundation of a new order, with its interests and aspirations, a far stronger government was demanded than a confederation of sovereign and self-governing members, and such a one the Convention of 1787 had provided, although the most sacred pledges of representative duty had to be violated in order to effect that object. The Federal pyramid was raised to the stars, whilst their regal ornaments were stripped from the states and distributed among a Congress, a president, and a Federal judiciary. Historians of the North and South, and such partial essayists as wrote the "Federalist," may assign the constitutional revolution to as many causes as interest, prejudice, or fancy may suggest; but the one given here is the true one. The new government was made to control the people, it was made to prevent counter-revolution; and this, at that era, was self-government in America, as seen from the inside.

CHAPTER VI.



IN the order in which our subject is distributed, we come now to the ratification of the constitution by conventions of the states,—those wells of popular sovereignty undefiled. It was the last act in the eventful drama which was begun in the legislature of Virginia by Federalists acting the part of States Rights men. The comedy of constitutional amendment, which was begun in 1783, was ended in 1788 in the tragedy of revolution, and it is decent that we who have stood by the cradle of self-government in America and

witnessed its birth, should attend at its death, its funeral and interment. The defence offered for the Convention of 1787 is that, in order to propose to the people of the states at that juncture a good system of government, the nature of the trust reposed in that body allowed them to pass over Congress and the legislatures, as an amending and ratifying authority, and submit their plan of government directly to the sovereign voters, and that the same public necessity excused them for setting at nought the instructions of the legislatures as to the extent to which amendment should be carried.¹ If the public necessity had existed, and the appeal from the servant to the master had been made in good faith, the plea would have a colour of validity; though then the legislatures might have been allowed to judge of the public necessity. But the plan was not submitted to the people at their voting-places to obtain a plebiscite, but was proposed to another set of agents elected like the members of the legislature, but who would be more malleable to the secret purposes of this new party of revolution. This fact renders the evasion manifest. The question was this: By what course of argument can the convention be justified in refusing to submit their work to the bodies who had commissioned them, and to whose final judgment the sovereign authority of the people had committed that important duty, but, instead, to assemblages of men unknown to the existing law and indicated by themselves? There were two advantages to be derived from that substitution: the delegations would not be brought to face Congress having a power of veto, whose authority they proposed to overthrow, nor the legislatures whose instructions defiantly had been pushed aside. But, considering conventions of the people as proper and convenient modes of ascertain-

¹ This ground was indicated by Madison, according to his reported Debates.

ing the popular will, were those oracles of the public consent so fairly interrogated as to make their decision equivalent to a popular verdict ; or were they not in some instances, and those the most important, induced to betray the trust reposed in them and ratify the new government when the voters at home were known to be opposed to it ? This is an important question to be answered in this book, where we are visiting the fountains of Democratic power, and the subject will be examined by such lights as have been procured by me after the lapse of a century.

John Marshall is known to us as the fullest and most reliable of Washington's biographers, and the greatest of American judges ; he must now be introduced to the reader in the additional capacity of a member of the convention which, in Virginia, accepted the Constitution of 1787. He was born in Lower Fauquier, and as a captain of infantry had entered Washington's army, where he served with credit throughout the revolution. The debates of the convention inform us that, being a lawyer, he was attached to the Federal party, where the greatness of his talents made him a conspicuous advocate of the constitution. Associated with the guiding minds of his party, he was informed of its tactics, its purposes, its hopes, and transactions, not only in Virginia, but in other states where success was considered most doubtful. Where a man so illustrious for character and genius writes of the times in which he acted, we attend with respect, assured that knowledge and truth ennoble every utterance of the pen. In respect to ratification, that witness and historian thus speaks : " To decide the interesting questions which agitated a continent, the best talents of the several states were assembled in their respective conventions. So balanced were the parties in some of them, that even after the subject had been discussed for a considerable time, the fate of the constitution could scarcely be conjectured ;

and, in many instances, so small was the majority in its favour as to afford strong ground for the opinion that, had the influence of character been removed, the intrinsic merits of the instrument would not have secured its adoption. *Indeed, it is scarcely to be doubted that in some of the adopting states a majority of the people were in opposition.* In all of them the numerous amendments which were proposed demonstrate the reluctance with which the new government was accepted ; and that a dread of dismemberment, not an approbation of the particular system under consideration, had induced an acquiescence in it. The interesting nature of the question, the equality of the parties, the animation produced inevitably by ardent debate, had a necessary tendency to embitter the disposition of the vanquished, and in many instances to fix more deeply their prejudices against a plan of government in opposition to which they were enlisted. North Carolina and Rhode Island at first did not accept the constitution, and New York apparently was dragged into it by a repugnance to being excluded from the Confederacy."

In 1788 there were in the Union only the original thirteen states which withdrew from the authority of the British government, and, as North Carolina and Rhode Island did not accept the constitution until after the government, which it provided, had been set up, the number of ratifying states was reduced to eleven. As the concurrence of nine of them was necessary, according to the terms of the constitution itself, to infuse life into the new system, we will have to determine, each reader for himself, whether the language of the historian justifies the belief that as many as three conventions affixed their seals to the constitution contrary to the wishes of the majorities which had elected their members. If we conclude that it does justify that belief, the constitution, concocted in a fraudulent disobedience of instructions,

was not ratified by the requisite number of conventions obeying the constituent will, and the government did not receive the sanction provided in the constitution. This is a wonderful fact concerning a government that claims to reign over the Western world by the consent of the majority. In every one of the many instances in which majorities were induced to accept the constitution under the sinister influence of "men of character," we know there was a majority opposed to it at home. Such a ratification was a fraudulent act, and would have annulled an agency in an English or American court of law or equity. But the doings of politicians rise above the plane of legal morality, and cannot be tried by judges and juries. Who the men of character were to whom Marshall alludes, who, at that supreme moment of a nation's destiny, interposed to cast the balance against self-government by the people in a democratic system, does not appear from any chronicle or record accessible to this writer, but only this, as by the most authentic evidence will be proved, that General Washington, and Governor Randolph, were certainly, in part, alluded to by him.

In the common use of words, "some of the adopting states" would be held to imply three states or more. On the one hundred and fifty-first page of the fifth volume of his work Marshall repeats the statement, using the same word to indicate the number of states, as though it was the prominent fact of that constitutional revolution, as in good truth it was. He says: "At length the votes for the President and Vice-President of the United States, as prescribed in the constitution, were opened and counted in the Senate. Neither the animosities of parties, nor the preponderance of the enemies of the new government, in some of the states, could deprive General Washington of a single vote." But the historian should have remembered that Jefferson, as yet, had not formed his opposition party of Democrats, nor had the public

been made acquainted with the correspondence of Bushrod Washington with Madison, afterwards to be displayed in these pages, else the biographer of Washington might have been deprived of that ground of felicitation. In his lexicon of the English language Doctor Noah Webster defines "some" to be a word denoting a number of persons or things, greater or less, but indeterminate. The example which he gives to illustrate the use of the word in this sense, is taken from Sir William Blackstone's Commentaries, and is as follows: "*Some* theoretical writers allege that there was a time when there was no such thing as society." In the sense in which the word is employed by that author the word "some" assuredly means more than two writers. The number of conventions which played false to their constituents, under the influence of the great Federal bribe, doubtless was indeterminate by the cautious historian, and therefore he made use of the word "some." With markets for the purchase of votes opened by the attorneys of the creditor at the threshold of every convention, it could not have been known to Marshall how many acts of ratification had been corruptly obtained, but "some" were obtained that he discovered.

The smallest number of states where a ratification was procured by purchase, or other illegal mode, is enough to demonstrate the character of the government, deriving its authority from such a polluted source, for number is an accident. It is a fact worthy of remark that, as soon as the conventions met, a chorus was sounded by the Federalists that by the act of election every constituency had parted with its power, and that the "representative," as still he was called, was at liberty, in his vote on the constitution, to disregard the opinion of the majority that had elected him. That this question of political ethics may be determined, before we proceed further, it

becomes necessary to examine whether those conventions were independent bodies, or were intended by the constitution to be an organ by which the majority opinion, as legally ascertained, might be expressed. The representative character of the convention would appear to be decided by the fact that each member of it was chosen by a majority of the voters in his county, and that no one of them took a seat by any other title. If a delegate was not a representative of the people, why was he chosen by the people? The Republic becomes a solecism when the delegate ceases to reflect the opinion and wish of the voters who selected him as their representative, but is swayed by those who are called "men of character," but who, if the truth were known, might have been actuated by some form of self-seeking, perhaps by Northern gold. But this is not a question of argument; it is a question of fact. The character of the constitution, as a government of the people, was stamped on its forehead by the convention who made it, the preamble of the constitution, sent to the conventions to be accepted, or rejected, being in these expressive words: "We, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America." "The people," then, were the ordaining power, the conventions were their organs, and, to the extent that their wishes, as indicated by majorities at the voting-places, were not represented in the Acts of Ratification, the constitution, according to its own theory, was deprived of a legal sanction.

If the word employed by Marshall be construed to signify only two states, and those should be important members of the Federal body, and so situated in the

Union as to divide it into several parts, as the states of Virginia and New York, a ratification, though by a complement of nine states, would have proved of no avail. In that case, within the same political area, two confederacies would have existed, both powerful and having many causes to provoke dissension and hostilities between them. In the list of ratifying states, it appears that the two just named were the last to accept the constitution before the government which it created was organized. On account of that reluctance and delay, as well as on account of their importance, it is probable that the partisans of the constitution would employ every agency at their disposal to attach them to the new Federal car. It becomes then a question of importance to discover, that the methods of the Federal party may be known, by what means ratification was carried to a consummation in New York and Virginia. They are test cases.

On the third day of June, 1788, the convention to ratify or reject the constitution for Virginia assembled at Richmond.¹ By that time it had been accepted by eight states, and friend and foe expected its fate to be determined there, although four days before the convention voted on the question of ratification, New Hampshire, as we know now, had taken position in the new Federal alignment. But that fact was not known to the Convention of Virginia, and, if known, the fate of the constitution would still have depended upon its action. The 25th day of June the committee of the whole House reported that "the constitution be ratified." Then came the trial of strength between those eager and hostile parties. A substitute for the report was offered by the opponents of the constitution, "That before the constitution be ratified it should be referred to the states for amendment." Upon the

¹ Mr. Conway states that the convention began its session the 2nd day of June. ("Life of Edmund Randolph," p. 110.)

question thus raised the vote was taken, and resulted in a majority of eight votes for the unconditional ratification of the constitution. When the vote was called upon the question of enrolment, the majority was increased to ten votes. If the majority be rated at eight votes, as upon the test it was, four votes taken from the Anti-Federal side and added to the Federal side produced that result, and placed Virginia among the "many instances" in which the extraneous influence of men of character induced deputies to betray the constituent will. With Marshall's statement before us, he being a member of the convention, and cognizant of Madison's snares and devices, it is probable, from his own evidence, that ratification was so produced in Virginia. But probability becomes certainty when we consult evidence which yet survives, notwithstanding the dust and oblivion of a century.

When Edmund Randolph returned from Philadelphia, he addressed a communication to the legislature of Virginia in which he assigned the reasons which had induced him to withhold his signature from the constitution which there so recently had been made. The general ground taken in that paper was that the instrument contained many defects which must be removed before Virginia could with safety accept it, and that it should be amended by another convention of the states. With that expression of opinion before them, the freeholders of Henrico county and Richmond city had chosen him to represent them in the approaching convention. But when that body convened, it became known that the Governor had changed sides on the question of ratification, and had become as zealous for the constitution as before he had been zealous against it. Long after, in allusion to that vote, John Randolph of Roanoke said of his kinsman: "Friend Edmund was like the aspen, like the chameleon—ever trembling, ever changing." It was this defection in the ranks of the Anti-Federalists that produced ratifi-

cation, for, than Edmund Randolph, there was not to be found in the commonwealth a public man of greater consequence, as the public trusts, devolved on him continuously, proved. We now recur to the correspondence of Washington, who, at Mount Vernon, was deeply interested in the "child of fortune," which at first he had spurned from him coldly, and had left to its fate. On the 4th day of June Madison writes to him with respect to the course of the Governor, who openly had changed his flag. Madison writes: "To-day discussions commence in committee of the whole. The Governor has declared the day of previous amendments over, and thrown himself into the Federal scale. The Federalists are a good deal elated at the existing prospect. I dare not speak with certainty of it." But the trembling balance had been cast by the Governor, for the General's next correspondent from Richmond speaks confidently of the victory which the desertion of Randolph would secure to the Federalists. Bushrod Washington was the nephew of General Washington, and was one of the able lawyers and public men of his day. He was made a judge of the Supreme Federal Court, which he adorned, not less by his talents and learning than by his virtues. He represented Westmoreland county, and thus writes to his uncle from Richmond: "Mr. Henry on Thursday called upon the friends of the proposed plan to point out the objections to the present constitution. This challenge, which was given with the appearance of confidence, drew from the Governor, yesterday, a very able and elegant reply for two hours and a half; for I suppose you have been informed of Mr. Randolph's determination to vote for the proposed government. However, I am not so sanguine as to trust to appearances, or even to flatter myself that he made many converts. A few, I have been confidently informed, he did influence, who were decidedly in the opposition." From this language it is clear victory was given to ratification by the apostasy

of Governor Randolph. If the word "few" embraces as many as three votes, and that number be added to the Governor's own vote, his defection accounts for the majority by which, on the test vote, the constitution was ratified. But Washington was strongly susceptible of party feeling, and was something more than an inactive sympathizer on that occasion. In this instance he interposed promptly and decisively, giving in the outset his approval to the great crime being perpetrated in the Virginia Convention against government by the people. Washington thus replies to Madison: "What I mostly *apprehend* is that the insidious arts of its opposers may have induced instructions to the delegates that would shut the door to argument and be a bar to reason." That was a strange avowal to come from the pen of a great moralist. He fears lest a betrayed principal—and that principal a people choosing a government—may have taken steps to arrest perfidious deputies in their guilty course! This brief sentence presents the father of his country, the subject of fatiguing eulogy, in a light in which he is not usually regarded. A breach of a public trust is approved by him, which cuts the roots of popular government and saps the base of political morals. By it all public faith is destroyed, and a fatal precedent set for all who were to follow him—a foundation is destroyed!

"If this fail the pillar'd firmament is rottenness,
And earth's base built on stubble."

But we, who have observed Washington's course since he turned politician, know that it is but a further development of those Federalist principles which he brought from the Convention of 1787, or carried to it. It cannot be pleaded in defence, or extenuation, that he was deceived as to the character with which a delegate was invested by an election, for already he had written to James Wilson, of Pennsylvania, that the politics of the delegates to the convention, with

respect to the constitution, would be determined by those of their constituents.¹ But we know the real issue with Washington was, which he would accept, counter-revolution or the constitution? And he preferred the constitution, by whatever means to be carried through the conventions, and by whatever sacrifices to be purchased.

Such was the leader of the American revolution! But there is conclusive evidence, derived from an independent source, to sustain the opinion that the opponents of the constitution formed the majority of the convention, if they be judged by the unerring test of the politics of the majorities in the counties. The texture of the committee of elections, and the reception of its reports, determine the character of an elected body; and, judged by that assured criterion, the convention, when it was organized, was composed of a majority of Democrats or Anti-Federalists. The committee of elections was constituted of a majority of Anti-Federalists, and ex-Governor Benjamin Harrison was placed at its head, who was distinguished even in those heated times for unwearied opposition to the constitution. As we learn from his correspondence with Washington, the ground on which Harrison stood in that memorable struggle was this: "If this constitution is adopted, the South becomes the mere appendage of the North"; a bitter truth, to which his grandson, President Harrison, appears to be fully alive. Contested elections were sent up from five counties, and, with but one exception, the seats were adjudged to those who voted against the constitution; convincing evidence that the party of James Madison did not constitute that committee.² The elections had been held in March, and according to the terms of the

¹ Jared Sparks' "Writings of Washington."

² A list of the members of the convention is appended to "The Lost Principle."

law the convention was to have deliberated in the pleasant month of May; but the Federalists in the legislature contrived to have the time of its meeting postponed to June, hoping that its determination would be influenced by the action of states more favourable to the projected change in government than the elections had shown Virginia to be. But for the postponed session it was agreed that, by the elected convention, the ratification of the constitution was hopeless. When assaulted in debate by Henry for his change of parties, Randolph admitted that, but for the postponed session, he would have voted against the acceptance of the constitution, but pleaded that in the interval he had been instructed by "the genius of America" to vote for it. So by an act of party finesse, as by the result of a great battle, the fate of a commonwealth was determined. As the convention was about to adjourn, the Governor supplicated one parting word, which amounts to a plea of guilty, as he stood at the bar of history. It was addressed to posterity, and, in part, to this writer, and is given here in fairness to the great culprit. Governor Randolph said: "The suffrage which I will give in favour of the constitution will be ascribed by malice to motives unknown to my breast. But, although for every other act of my life I shall seek refuge in the mercy of God, for this I request His justice only. Lest, however, some future annalist should, in the spirit of party vengeance, deign to mention my name, let him recite these truths: That I went to the Federal convention with the strongest affection for the Union; that I acted there in full conformity with this affection; that I refused to subscribe because I had, as I still have, objections to the constitution, and wished for a free inquiry into its merits; and the accession of eight states reduced our deliberation to the single question of Union or no Union." Governor Randolph seems, from this language, to have discarded altogether the representative character. But his state-

ment is not correct ; for the Union was in no danger after the accession of eight states. The non-accession of Virginia to the Union made another constitutional convention a certainty,—Governor Randolph's professed object from the beginning. His constituents had peremptorily instructed him at the polls to vote *against* receiving the constitution before it had been amended by the states, and he had entered into a solemn engagement with them so to act. He says that, from motives of policy, as he understood it, which had nothing to do with the question, he chose to violate the high trust that had been reposed in him by them.

I find in the journal of the House of Delegates of Virginia evidence sufficient of itself to convince us that the constitution was ratified in opposition to the popular will, and that we have discovered from Washington's correspondence but a small fraction of the deserters. It is one of those unexpected confirmations which truth often receives from collateral sources, for the army of facts moves onward in a coherent mass. The legislature had held a session in June, but two days before the convention adjourned, and the members had hurried home to gather their harvests. Private interests then, as now, were predominant with the elected by the people. The intercourse with their constituents instilled into them a fiercer opposition to a system which, by such culpable means, had been fastened on the commonwealth. In October the Houses reassembled, and attacked ratification with great fury. The House of Delegates took the lead, resolved itself into a committee of the whole House, and, after vehement debate, of which we see much in the letters of that date, reported a preamble and resolutions. Henry was supreme in the legislature, and pronounced at that session a philippic against Madison on account of his course in the convention as leader of the victorious Federal party.

This shows what would have been the fate of the constitution had it been submitted to the state legislatures for ratification.¹ The third resolution indicates the temper of the legislature, and announces the fact that the voters of the state had been opposed to the government which the convention had just accepted. It in these words: "Resolved, that it is the opinion of this committee, that for quieting the minds of the good citizens of this commonwealth, and securing their dearest rights and liberties, and preventing those disorders which must arise under a government not founded in the confidence of the people, application be made to the Congress of the United States, so soon as they shall assemble under the said constitution, to call a convention for proposing amendments to the same, according to the mode therein directed." When the preamble and resolutions were reported, the Federalists moved to substitute them by a proposition that amendments be made to the constitution, to be ratified in the mode provided by its fifth article. The dividing line between the parties, we see, was unchanged. The Speaker put the question, according to Parliamentary usage: "Shall the substitute be adopted?" In a House of 124 members voting, a majority of forty-six votes was given against the substitute, which was equivalent to voting against the approval of the ratification which had just taken place. That legislature had been elected one month after the voters of each county had chosen members for the convention; and, when the nature of the proposition before the people is considered, with the violent passions which it had aroused, no assurance is needed that both convention and legislature had been elected with reference to the pending constitution. Indeed, from the time of its publication, the constitution, naturally, had been the absorbing topic of thought

¹ Jefferson's correspondence of that date.

and discussion, both in public and in private. The letters of that time prove this, if any evidence be necessary. It was a momentous issue presented for the decision of a people attached to self-government. In monarchical systems an offended sovereign, by exemplary penalties, would have punished servants so disobedient and disloyal; but in the Republic of the United States wrong enjoyed an open and insolent triumph, and a sovereign people, impotent as Lear, were remitted to idle protest and worthless petition, whilst the minions who had deceived them were rewarded and honoured with high office by the Federal sovereign who, through treachery, had been set over the Union.¹

¹ Mr. Conway admits, with a candour apparent throughout his interesting volume, that ratification was carried in the convention through the breach of the constituent trust by Edmund Randolph. He calls him "a recusant," but a harsher name was found for him in the popular vocabulary. The biographer of Randolph says: "That Virginia was carried, by a small majority, was unquestionably due to the influence and eloquence of its governor." ("Life of Edmund Randolph," by Moncure Daniel Conway, p. 109.) Nor does he leave room for doubt as to the gravity of Randolph's objection to the constitution, which so remorselessly he waived. "He had before intimated to the convention [of 1787] that he could not sign the constitution in the shape it was then assuming, but he knew that it would become the basis of government. It is melancholy to reflect that the convention disregarded Randolph's efforts to make the relative state and Federal powers definite and unmistakeable. The clause he would have added in ink has since been written in blood. . . . He agreed to sign if the convention would add a provision for a second constitution." Being thus committed to the necessity of another convention of the states, when he stood for an election to the Virginian Convention before the voters of Henrico county and Richmond city, it was a crime of deepest dye, upon any pretence whatever, to have voted for the constitution, and persuaded others to vote for it, without that condition precedent had been complied with. .

CHAPTER VII.



It will not be without interest and instruction to discover the nature of the influence which wrought so great a change in Governor Edmund Randolph. It will uncover causes which often influence popular governments in important crises, and will display the fact that, of all throned powers, "the people" are most exposed to betrayal by their servants; a truth into which already we have had some insight. The period of his exclusion from Federal life having expired, his resumed chronicle of its debates and proceedings, as well as his correspondence, informs us that from February 19th, 1787, James Madison was again in the Congress of the Confederation. Three eventful years had elapsed since the exile had left those halls. During that interval, Federalism, before so feeble, had become a triumphant power. The Federal leader, like an eagle from his crag, had watched the Annapolis Convention, and had carried it off at a swoop. From that time Federalism proceeded from victory to victory: its march was a triumphal procession. The legislatures, cozened by false promises, and deluded by deceitful hopes, had helped the treacherous party to the attainment of its ambitious objects. The convention of the states had been convoked, had deliberated, had made and published a new government, and he, the false one, the most potential agent in producing that change, was now in a Federal watch-tower, examining the horizon, and reporting to his confederates in the North, in the South, and at Mount Vernon, every movement that tended to accelerate or retard the consummation of the revolution in government which had been so successfully begun. By the light of that

correspondence, and those debates, the character of that able but unprincipled statesman can best be studied, and the arts of flattery and indirection understood by which he sought the illegitimate objects to which he had devoted his high gifts. In his letters to Edmund Randolph, Madison discards reserve and avows his purposes. We have stepped a century back in the world's history, and are standing now amid the architects and joiners of the great Federal polity of the modern world, and it cannot but be interesting to the impartial reader to comprehend the means which were employed in that work. The new timbers to be used in the remodelled ship of state had been discussed by those projectors, and, on the occasion now to be mentioned, the measure of representative influence, and a different sanction for the Federal plan, claimed attention. The letter from which quotation is made was addressed by this wily statesman to Randolph from New York, where Congress was in session, two months before the convention met at Philadelphia. "To give the new system proper energy," writes Madison "it will be desirable to have it ratified by the authority of the people, and not merely by that of the legislatures. I am afraid you will think the project, if not extravagant, absolutely unattainable and unworthy of being attempted. I flatter myself, however, that they are less formidable on trial than in contemplation. The change in the principle of representation will be relished by a majority of the states, and those of most influence. The Northern states will be reconciled to it by the actual superiority of their populousness; the Southern by their expected superiority on that point. This principle established, the regugnance of the large states to part with power will, in a great degree, subside, and the smaller states must ultimately yield to the predominant will."

Here, with grim candour, are stated the methods of

a Republican statesman projecting a new government for his country. He has ambition for the strong, deception for the trusting, and force for the weak. This policy, born of duplicity, was embodied in the new structure, drawing down on South section, the party to be fooled by an expected but illusory populousness, the destruction which comes from bad government and the sword; so that the treacherous plots of the politician, in their fruition, often overwhelm the states which they serve. But the intrigues of those public men of Virginia, acting on a different theatre, affords still another example of that disagreeable but valuable lesson. If we turn to Madison's letters of the date of December 20th, 1787 (one to Washington, and one to Jefferson), additional evidence is found of Randolph's hostility to the constitution and, in the former one, the ground of it stated; but it is not until Madison's letter to Randolph of January the 10th, 1788, that we are apprised of the writer's bold design to draw the Governor of Virginia over to the side of the constitution. Randolph was before the voters of the city and county for election to the convention. There were yet two months to elapse before a choice of delegates was made, during which the tempter had time to operate. If his determination was influenced by the deceitful logic of his former associate in Federalism, Randolph sought the political trust with the intention of betraying it. Doubts of the Governor's fealty had gotten abroad after election day, and Washington, with pleasure, informs a correspondent: "If the Governor opposes the constitution, it will be feebly." In the Republic there was no law of treason, and no courts for the punishment of such offenders, but additional rewards; and he who should have been nailed to the cross was promoted to the highest and most lucrative offices in the gift of Washington's administration: for bad faith to the people was fidelity to the newly-elected President and his government.

We will be further enlightened on the politics of that remarkable period of Republican history if the class of inducements is exposed by which a member of Congress seduced a governor of Virginia to pass over to the Federal service, deserting that to which he was pledged by a popular election. This can only be done in the words of Madison's letter. The occasion which produced it was the receipt from him of a copy of the Governor's address to the legislature, explaining the weighty reasons which induced him to withhold his vote of approval from the constitution. It displays Madison's ability as a writer and his mastery of the disingenuous arts of flattery. The obdurate rock, if he could not break, he melted by those soft fires. The letter goes on to say: "It is to me apparent that had your duty led you to throw your weight in the opposite scale it would have given it a decided and unalterable preponderance, and that Mr. Henry would either have suppressed his enmity or been baffled in the policy which it has dictated." The discordant objections of the opposers of the constitution are brought into view, and also the assumed fact that a second convention would be composed chiefly of the members of the opposition, large sections of which were known to favour a division of the Union into subordinate leagues, with the ultimate purpose, as was charged, of "reversing the revolution." The rejection of the constitution, then, the writer said, would only advance Henry's "real designs." The letter insists that the friends of a good constitution would not only find themselves in a second convention differing as to the proper amendments, but perplexed and frustrated by men who had objects totally different. There was still another consideration presented to the mind of Governor Randolph which made it indispensable to the advocates of a general Union, unless they relinquished that darling object, to have the constitution adopted by Virginia in the approaching convention.

Should it be rejected there, the logician urges, and North Carolina coincide in that rejection, as appeared most probable, the Union would be exposed to danger, let ratification go as it might in the states lying north of Virginia. Indeed it was evident, reasoned Madison, that the constitution would be lost, for South Carolina and Georgia, however much inclined to Federalism, would be controlled, on account of their detached situation, by the negative action of the two powerful states of Virginia and North Carolina. The letter insisted, that not only the prosperity of the Federal party, but the fixedness of the revolution and the support of the Union—objects to which Randolph avowed his attachment—alike demanded that the constitution be now ratified by Virginia. But it is probable that the argument of greatest weight with the proposed convert, around whom was woven these artful toils, was the asserted incapacity of the people to form an intelligent opinion as to the merits of the constitution, the Federal party proposing in that critical juncture of public affairs to become guardians of a ward incapable of taking care of his estate or of himself. Although the Virginians might not be capable, in the opinion of those two statesmen, of forming a correct judgment concerning the constitution, they were fully capacitated to say whether, by the circumlocution of a national government, they were willing to become the vassals of North section and lose independence, a valuable possession under whatever form of government to be enjoyed. We will hear Mr. Madison, in the fullness of his wisdom, discourse on this interesting subject : “ Whatever respect may be due to the rights of private judgment, and no man feels it more than I do, there can be no doubt that there are subjects to which the capacities of the bulk of mankind are unequal, and on which they must and will be governed by those with whom they have acquaintance and confidence. The proposed consti-

tution is of this description. The body of those who are both for and against it must follow the judgment of others, not their own. Had the constitution been framed and recommended by an obscure individual, instead of by a body possessing public respect and confidence, there cannot be a doubt that, although it would have stood in the identical words, it would have commanded little attention from most of those who now admire its wisdom. Had yourself, Colonel Mason, Colonel R. H. Lee, Mr. Henry, and a few others, seen the constitution in the same light with those who subscribed it, I have no doubt that Virginia would have been zealous and unanimous as she is now divided on that subject. I infer from these considerations, that if a government be ever adopted in America, it must result from a fortunate coincidence of leading opinion, and a general confidence of the people in those who may recommend it. The very attempt at a second convention strikes at the confidence in the first, and the existence of a second, by opposing influence to influence, would in a manner destroy an effectual confidence in either, and give a loose rein to human opinions, which must be as various and irreconcilable concerning theories of government as doctrines of religion, and give opportunities to designing men which it might be impossible to counteract.”¹ James Madison was the fourth President of the United States, and his opinion as to the false base upon which they had put government in America was characteristic of the other leaders of the Federal party. It was certainly shared by General Washington, when prudent reserve allowed him to utter his thoughts on that delicate point. He appears early to have formed his opinion on that subject, for he thus expressed himself in his letter to Harry Lee, to which allusion already has been made: “It exhibits a melancholy verification of what our transatlantic foes have predicted, and of

¹ Madison Papers, letter to Governor Randolph of this date.

another thing to be still more regretted, and is yet more unaccountable, that mankind when left to themselves are unfit for their own government."

As Virginia was one of the states in which the constitution was accepted whilst the people stood in determined and angry opposition to it, so New York undoubtedly was another state standing in that category. That New York was, as Marshall states, dragged into ratification, is a fact confirmed by a circular letter from Governor Clinton soon to be considered and quoted. So that if Virginia had been allowed to reject the constitution, in accordance with the desire of the majority, there can be no doubt that the proposed change in government would have been repudiated by New York and the Union continued under an amended Confederation, and so things would have drifted on until the Republican experiment had confessedly failed and the states gone back to the mother country to enter upon a new destiny. At Poughkeepsie, on the 26th of July, 1788, the constitution was adopted by a majority of *three* votes. In that ratifying body the Federalists openly inculcated their immoral doctrine that a delegate, after accepting the representative trust, was at liberty to vote according to his inclinations, a proposition which those speakers assuredly would not have inculcated had not their party been in a minority in the convention. Hon. Robert E. Livingston opened the debate in this way: "I trust, sir, there are many gentlemen present who, as yet, have formed no decided opinion on the important question before us, and who, like myself, bring with them dispositions to examine what shall be offered, and not to determine till after maturest deliberation. To such I address myself." But the slight and inconclusive majority of three votes could not have been obtained for the new system had not a subsequent convention of the states, for a constitutional revision, been made a condition of the compact of ratification. That bargain made the

ratification of the constitution a treaty between the parties, the observance of which, it was believed, a simple representation of the fact to Congress would secure. Governor George Clinton, with whose aversion to constitutional amendment we are acquainted, was made president of the convention when the delegates were fresh from the people, and the selection of so pronounced an Anti-Federalist proves conclusively that the convention contained an Anti-Federal majority at that time, representing a corresponding majority among the voting people. As the president of the convention, and by its unanimous order, Clinton signed the circular addressed to each state of the Union and to the new Congress, the first paragraph of which is given: "We, the members of the convention of this state, have deliberately and maturely considered the constitution proposed for the United States. Several articles in it appear so objectionable to a majority of us, that nothing but the fullest confidence of obtaining a revision of them by a general convention, and an invincible reluctance to separating from our sister states, could have prevailed upon a sufficient number to ratify it without stipulating for previous amendment. We all unite in the opinion that such a revision will be necessary to recommend it to the approbation and support of a numerous body of our constituents." The protesting legislature of Virginia responded to the New York circular in appropriate language: "That the draft of a letter be made in answer to one received from his Excellency George Clinton, president of the Convention of New York, and also a circular letter on the aforesaid subject to the other states in the Union, expressive of the wish of the general assembly of this commonwealth, that they may join in an application to the new Congress to appoint a convention of the states under the new constitution."

There was a wide chasm which separated the Anti-

Federalists from the Federalists. If the former sustained themselves in the position, that the constitution must be revised by another convention, it was certain that the Confederation would be amended and retained as a government for the Union, unless, indeed, the convention had been broken up by a determination of the states to renew without delay their transatlantic connection; but if the Federalists were successful in having the constitution ratified first, and amended afterwards, it was equally certain that no amendment would be allowed which affected the frame of the government, or diminished its formidable strength. Placed on that ground, of ratification first and amendment afterwards, it was discovered that the Federal party, notwithstanding the alliance of the public creditor, would probably be defeated. It was necessary that another deception should be practised on the conventions, and the dexterous Madison was selected to continue and carry it into effect. The fraud was this: amendments to the constitution were to be treated as conditions subsequent, and to be held forth as equally binding on the amending power as if they were conditions precedent. The fraudulent device succeeded in New York, in Massachusetts, in Virginia, and perhaps in other states likewise.

The convention in Massachusetts was composed of heterogeneous elements. Eighteen of the members had been in the rebellion with Shays. Parties were so divided that the Federalists doubted the result, whilst the Anti-Federalists were confident they would defeat the constitution by eight or twelve votes. After surveying the field, as exhibited by his correspondence, Madison was satisfied that his party would be overthrown unless he could successfully practise this new fraud. He writes to Washington: "We must take off some of the opposition by amendments. I do not mean such as are to be made conditions of ratification, but recommendations only. Upon this

plan we may probably get a majority of twelve or fifteen, if not more." We turn now to the Convention of Massachusetts, about which that letter had been written, and learn how the scheme worked which Madison had devised. Of course there was no merit or plausibility in the contrivance, unless members of the opposition could be induced to believe that recommended amendments would be treated as equivalent to conditions subsequent, as the lawyers understand them. So construed, the assurance might draw off a portion of the opposition ; as it was, it was the means of having the constitution ratified in Massachusetts by a majority of nineteen votes. John Hancock, of famous memory, and the first gentleman in the Union, held the fate of the constitution in his hands. He was deceived by that fraud. Hancock and his following voted for the constitution, but as he gave that vote he made this explanation of it : "I give my assent to the constitution in full confidence that the amendments proposed will become a part of the system."

November 14th, 1788, the Assembly of Virginia adopted a resolution urging upon the new Congress the long series of amendments which had been proposed by the ratifying convention in these words : "In the very moment of adoption, *and coeval with the ratification* of the new plan of government, the general voice of the convention of this state pointed to objects no less interesting to the people they represent, and equally entitled to our attention. At the same time that, from motives of affection to our sister states, the convention yielded their assent to the ratification, they gave the most unequivocal proofs that they dreaded its operation under its present form. In acceding to the government under this impression, painful must have been the prospects, had they not derived consolation from a full expectation of its imperfections being speedily amended. In this recourse therefore they placed their confidence. . . . We do,

therefore, in behalf of our constituents, in the most earnest and solemn manner, make this application to Congress that a convention be immediately called of deputies from the several states, with full power to take into their consideration the defects of this constitution that have been suggested by the state conventions, and report such amendments thereto as they shall find best suited to promote our common interests, and to secure to ourselves and our latest posterity the great and inalienable rights of mankind." We may form from this extract, taken in connection with Madison's letter to Washington, an opinion as to the assurances which that dissembler made in the Virginia Convention with reference to the binding character of subsequent amendments. Here was ample cause for Henry's philippic.

The promised constitutional revision by another convention of the states was not made, and the amendments adopted by the conventions and sent to Congress were treated with neglect, or only such accepted as did not at all affect the excessive jurisdiction of the government. Mr. Viner summarily disposed of the amendments, saying: "There are many things mentioned by some of the state conventions which he would never agree to on any conditions whatever; they changed the principles of the government, and were, therefore, obnoxious to its friends." Mr. Gerry had been invited by the Convention of Massachusetts to be present at its deliberations to give explanations of such parts of the constitution as the convention might ask, on account of his membership of the Convention of 1787, and therefore is a witness of credit as to what transpired there. He was a member of the new Congress when the amendments proposed by the state conventions were brought forward and so slightly treated. His remarks bear with particular significance upon the declaration of President Hancock as he was about to cast his vote

for the constitution. Mr. Gerry said: "The ratification of the constitution in several states would never have taken place had they not been assured that the objections would have been duly attended to by Congress, and I believe many members of those conventions would never have voted for it if they had not been persuaded that Congress would notice them with that candour and attention which their importance required." This then forms another title which Madison has to be called the father of the constitution.

It appears that the convention in New Hampshire also accepted the constitution, whilst a majority of the voting population, as represented in the convention, was opposed to the change in government. When the body was convened the majority was with the Anti-Federalists, but enough votes proposed to go over to their opponents to have the constitution ratified, being convinced, as they said, of the superior merit of the new constitution *by the persuasive rhetoric of the Federalists*. But timely instructions from their towns, such as Washington had dreaded in Virginia, withheld them. An adjournment was carried, and, when the convention again convened, the constitution was approved, as already we know. (Madison Papers.)

New Hampshire makes the fourth state in which the new government was accepted by a convention, whilst the people were opposed to the act. But for those fraudulent ratifications the constitution could not have received its adoption by the complement of nine states.

There is a show of right in superior power to which men submit; there is a native majesty in force to which men bow down; but the Federalists, unable to command that, evoked a subtle and wicked fiend for their service—fraud—and well did he serve his masters. It was by that diabolical agency that the constitution was riveted on the people of the Union; it was thus that the cunning circumvented the wise, and the feeble overpowered the strong.

CHAPTER VIII.

EDMUND RUFFIN, HIS TRAGIC DEATH.



YEAR or two before the war of the sections began, this writer met Edmund Ruffin whilst he was engaged in searching the archives of the state for information touching the ratification by Virginia of the Constitution of 1787. When interrogated on that subject, he informed me that he knew but little with respect to it: "Only this," added Mr. Ruffin, "that according to a tradition which had reached him, Mr. — and Mr. — (Mr. Ruffin called the names of two distinguished Northern statesmen) brought gold to Richmond whilst the convention deliberated, and with it purchased a ratification of the constitution which now governs the Union."

Old Edmund Ruffin of Hanover county, one of the leading scientific planters in America, as his numerous and valuable writings prove, was the honoured patriarch of the Secession party of Virginia. Of an ample fortune and honourable connections, he had devoted the energies of a strong and inflexible mind and ardent temper to the duty of relieving the South of its burdensome connections with the North. He wrote much in advocacy of his opinion, displaying it in every light, until it had become with him a religion. His outspoken and uncompromising politics were known and respected throughout South section, but were treated with particular favour and honour in South Carolina. The military bias of his character was decided, and he rejoiced in the battle's tumult. That he might serve his country by deed as well as by word, he attached himself to an artillery company commanded by Captain Delaware Kemper, of an old

heroic blood, first in the onset, first in the pursuit. It was Mr. Ruffin's pride that he had fired the first gun at Sumpter and the last at Manassas. In cap and uniform of gray, and stained with the toil of battle, I saw him standing by his gun amid the closing scenes of the first Manassas—the sublime old man! With burning eyes and flowing white hair, he looked like Nestor in the camp of Agamemnon.¹

When the Southern cause was lost, he refused to survive the independence of his country. He died with the serenity of Socrates, and his death deserved to be recorded by the Tragic Muse. He was at the house of his son in Amelia county when he was informed of the surrender of Lee's army, and he determined to destroy his life. When the fatal hour arrived, visitors had come, and he was too considerate to agitate them by so painful a tragedy. The interval until their departure, as his journal showed, he occupied with reading, with writing, and with meditation. Heroic Edmund Ruffin! a conquered Republic was not suited to a man of thy mould, and thou hast passed over the abyss to the Walhalla.

CHAPTER IX.



Its constitution is inseparable from a republic, is, indeed, its soul and principle, the scheme and theory of that of 1787 deserves particular attention in this work. Its framers intended to place their polity in the class of mixed governments, so highly applauded

¹ As I passed Kemper's battery, accompanied by Captain Eugene Davis's command of Albemarle cavalry, to engage farther in the pursuit, Mr. Ruffin had just discharged his final shot at the retreating foe.

by Montesquieu, who by his writings has given so great and undeserved popularity to constitutional government. The house of representatives was to stand for the democratic part of the structure, whilst the president represented the monarchical part, and the senate the aristocratic part—conforming to king, lords, and commons of the English system. Each was designed to check or control the action of the other departments, except, liberated from the embarrassments of adverse and clashing interests, importunately urging their claims, they had applied that compound government to an unmixed republican society. By this studied contrivance it was expected to hold in chains the formidable majority power ready to dominate, as was seen by the political architects, in a republican empire. But a single fact, sufficiently obvious, ought to have arrested those theorists and imitators. The three principles incorporated in the English constitution had corresponding parts in the national body, making the government but a reflex of the nation : the royal personage, with the important interests which adhere to a crown (for both Bolingbroke and Calhoun consider the crown as constituting the first estate) ; the aristocracy, a wide-spreading and powerful order ; the commons, blended of many diverse elements, not naturally antagonistic to the lords or to the crown. In the United States the body of the nation was not so composed. In that new land society knew no feudal divisions—no crown, no aristocracy, no commons, at least no commons formed and tempered as the commons of England. Not only was there no analogy between the structures, but dissimilarity marked each limb and fibre. Hyperion did not less resemble the satyr than England resembled the United States. History informs us what the Norman Conquest, with its feudal appendages, and subsequent events, as modified by the practical genius of the Englishman, accomplished

in that country. But what materials had an American statesman out of which to form composite government? After the revolution had broken down its subdivisions and its ramparts, and almost swamped society, leaving only the shattered fragments of a colonial system, he had only an unorganized mass of human beings to work upon—a democracy level as the sea, and jealous of its exclusive authority. Reason teaches that a government ought to conform to the nation for which it is made, and be a part of it, even as the skin is of the living body, and we are lost in astonishment that a collection of able statesmen should have transplanted to the American nation a government of the diversified principles of the Anglo-Norman constitution. In truth, after the revolution, America was adapted only to the government of a monarch who, by the plastic hand of power, could have organized around him, or to such a loose temporary arrangement as the Articles of Confederation provided for the states. Conservatism, instead of being found in the structure of society, was sought by the architects of the Republic in the bars and checks of a written constitution. Jefferson, the Corypheus of Democracy, speaking *ex cathedra*, instructs M. Marbois in the mystery of constructing representative government. It is the most curious part of his attractive volume, and shows the length to which a theorist will run.¹ The budge doctor informs his pupil that constitution-making is not so difficult an affair after the secret is known. He writes: "It is only necessary to provide an opposition of parts. There must be different houses of legislation to introduce in the government the influence of different principles, or different interests." But experiment very soon exposed a fact of which the theorist had not taken notice. A sea-current of opinion swept along in the same direction both his houses and the executive also. Upon that

¹ "Notes on Virginia."

unstable and tremulous raft the rash schemer was ready to embark society in the Old World, as he had done in the New.

But Jefferson, with his impracticable notions about government, was not a builder of the American temple of constitutional liberty as it raises its gigantic proportions before the gaze of mankind, and we will best derive the principles of that architecture from its master-workmen. We will hear James Wilson first, as he is explaining the constitution to the farmers and artisans of Pennsylvania assembled in convention : " We are told there is no check in the government but the people ; but I apprehend that, in the very construction of the government, there are numerous checks. Besides those expressly enumerated, the two branches of the legislature are mutual checks upon each other." Another of the Illuminati, Charles Pinckney of South Carolina, who also had been a deputy to Philadelphia, thus fluently and easily discourses on that dark and intricate subject. He too, it appears, had read Montesquieu, and, thus equipped for statesmanship, says : " The purpose of establishing different houses of legislation was to introduce the influence of different interests and principles, and he thought we should derive from this mode of separating the legislature into two branches those benefits which a proper complication of principle is capable of producing." We will now attend to Colonel Hamilton, with his head full of ideas,—soldier, lawyer, scholar, statesman,—as he spins cobwebs of the brain for the enlightenment and delectation of the Convention of New York : " The great desiderata are free representation and mutual checks. When these are obtained, all our apprehensions of the extent of power are imaginary. What then is the structure of this constitution ? One branch of the legislature is to be elected by the people who choose your state representatives. Its members are to hold their offices for two years,

and then return to their constituents. Here the people govern ; here they act by their immediate representatives. You have also a senate constructed by your state legislatures, by men in whom you place the highest confidence, and forming another representative branch. Then, again, you have an executive magistrate created by a form of election which merits universal admiration. In the form of the government and the mode of legislation you find all the checks which the greatest politicians and the best writers ever conceived. What more can any reasonable man desire? Is there one branch in which the whole legislative and executive power is lodged? No! The legislative authority is in three distinct branches properly balanced ; the executive is divided between two branches, the judicial is still reserved for an independent body, who hold their offices during good behaviour. This organization is so skilfully contrived, so complex, that it is next to impossible that an impolitic or wicked measure should pass the scrutiny with success."

The executive department, representing the Crown, and considered by Colonel Hamilton a masterpiece of political mechanism, consisted of a president chosen by a college of electors, who were elected by the states in such manner as the legislatures thereof might direct. The president divided with the senate some of his executive functions. It was confidently expected that a president thus chosen would be placed beyond the reach of the tides of popular opinion, thus securing to the nation the blessing of an independent executive authority. But experiment, with its merciless hand, immediately exposed the fallacy of that expectation, for the electoral college, when the people became the appointing power, was but an urn in which the voters deposited their ballots, each voter knowing as certainly the candidate for whom he voted, when he preferred a particular set of electors, as if his

suffrage had been directly given. From President Washington to President Cleveland the college of electors has been a conceded sham, and President Andrew Jackson, who detested shams, advised that it be abolished.

The democratic power soon asserted its dominion over the senate, breaking into that sanctuary of the constitution. The senate, where the form of Webster towered, and from which, as a rostrum, he addressed a listening nation, was designed to be a fortress in which the conservatism of the system would find a constant and impregnable retreat. The senators, undisturbed by a raging democracy, were expected to keep the ship well trimmed. To remove him from the people, and secure independence, a senator is directed to be chosen by a state legislature, but with the growth of ideas the legislatures also became popular agencies, and the voters are canvassed by candidates for senatorial honours. Of this examples might be adduced. The House of Representatives alone has not disappointed the expectation of its creators. The plan of producing counteraction in the government by balancing different departments and branches of it has proved an absolute failure. There are no opposing principles in a democratic system, only different parts obeying one imperious will, and no conflict, except when the factions are intrenched in different parts of the government. Even the judiciary, in its silken robes, and fortified by a life term, bends prone to the majority power, for Congress and the president can reorganize the courts. The triumphant architects, as they esteemed themselves, boasted they had extracted the principle of the mixed government of England, and had infused it into a Republican body of fresh mould, but had left the carcase in its old and wrinkled skin to rot on the dunghill.¹ Such was the fine talk

¹ In his "Notes on Virginia" Jefferson exults in the belief of the decline of England. But Adam Smith had already ex-

when the constitution was submitted to the states, and we smile at the credulity of its projectors. As a reproduction in principle of the English system the Constitution of 1787 proved as total a failure as that which Mr. Locke prepared in the retirement of his closet for the royal colony of South Carolina. That political curiosity, the product of the speculations of a philosopher, was provided with a head to be called a palatine, whilst landgraves and caziques, an extemporized nobility, formed a part of a colonial parliament. The plan required those nobles to be great landlords, but their bountiful creator had neglected to indicate from what source their estates were to be obtained, and also the fortunate families selected to compose that new patrician order. It was a figment of Mr. Locke's brain, a government on paper, having no more relation to the condition of the rude colony of South Carolina than to Jupiter, Saturn, or the Sun. Having no ground to stand upon—neither cazique, nor landgrave, nor palatine—when the time for organization came the government could not be installed. Its parts were not existent. The American government, however, was organized and set in motion, but did not fulfil the design of its projectors. President Washington surrounded himself with the ceremonies of royalty—a mock court; but four years later Jefferson, with his democratic broom, swept them all away, presenting the Republic in a simplicity as severe as a naked Venus. But, in a more important respect, the government answered perfectly the object of its institution. It created many offices, with salaries and perquisites, for the fathers of a renovated Republic, and the mercenaries who trooped under their banner.

Washington was made president; John Adams was made president; Jefferson, Madison, Monroe, each in plained that the loss of her colonies would not diminish the commercial wealth of the kingdom in causing a concentration on the more profitable home trade.

his turn, was made president, whilst their retainers and henchmen filled other posts in the Federal commonwealth. It was a plenteous harvest, and the reapers were many. When Madison asserted in debate, in the Convention of Virginia, that under the proposed government there would be few office-holders, Patrick Henry said it would be otherwise, and that each patriot would be provided with his "fine, fat, snug Federal office," and very soon the Federal Republic declared itself to be the government of the office-holder, instead of a government of the people. Indeed, office had been the glittering prize which suggested the revolution to the American patriots. Those aspiring men could not endure the obscurity of colonial life, and France proposed a path for their ambition. It was from the English government of the period of Elizabeth Tudor, or the Stuarts, that the new polity had taken its frame, whilst that of the Confederation, as we have seen, was borrowed from the Parliamentary plan, introduced under the House of Orange, and the advocates of each claimed the respectable authority of the mother country.

But there was another contrivance in the constitution to annul the force of the majority power which we must not overlook, though it may well excite surprise that, after declaring the divine right of the majority to govern society, the American fathers should have devised modes to check or paralyze its will. But such is the inconsistency in those who establish false theoretical systems. As soon as a Federal government was set in motion, the fact became manifest that a diversity of legislative interests existed in different parts of the continent. Out of it arose a party, as soon as constitutional reform was agitated, who advocated a division of the Federal body into partial confederacies, running along the line of these contrary interests. As many as three divisions were proposed by some of those projectors, but by the

greater number only two, one for North section and one for South section, between whom nature and the institutions of society had created an ineffaceable difference, a chasm which only political folly or the sword could bridge. A pronounced expression of that opinion, in the Congress of the Confederation, is contained in a memorandum in the Madison Papers after the period of Madison's exile from that body had terminated. The memorandum is in these words :

"Mr. Bingham alone avowed his wishes that the Confederation might be divided into distinct confederacies, its great extent and various interests being incompatible with a single government. The Eastern members were suspected by some of leaning toward some Anti-Republican establishment (the effect of their late confusions), or of being less desirous or hopeful of preserving the unity of the empire. For the first time the idea of separate confederacies had got into the newspapers. It appears to-day (February 21st) under the Boston head."

But after the constitutional convention assembled, nothing was heard of any proposal for disuniting the states, but only plans were discussed for organizing them more strongly into a Federal body, but securing particular interests from encroachment by the government, the chief of which was the plan of an equilibrium of power between the North and the South. This arrangement, brought forward as a substitute for several governments, contained a feeble and lingering principle of self-government for the South, under the Constitution of 1787. But it was erroneous and feeble in conception, for it provided a paralysis of government in cases where important interests demanded its active patronage. This truth in politics, rendered so plain by experiment, appears not to have been understood by the framers of the constitution, for "the subtlety of nature is far beyond that of the sense or the understanding," which Bacon teaches as the

foundation of his experimental philosophy. If we search the debates of the convention, as well as the correspondence of Washington, we will find the philosophy of government, as announced by the Federal party, did not go beyond a provision for a negative power, which they sought to introduce covertly in their organism by adopting an arrangement suggested by the craft of Madison, which would flatter the North with the possession of power, and the South with the prospect of obtaining it, but which would result as was hoped in a substantial balance. They seemed to have dreaded to announce in their constitution an antagonism of interests between the two sections, even by making an acknowledged provision for it.

As soon as the sections were assembled in convention, and the question of power was approached, an angry rivalry was produced. North section, with its majority of white population, insisted, with customary fairness, that whites alone should be admitted to the representative basis, but, looking to its own importance and safety, South section declared it would not confederate with North section unless slaves to the full extent of their number were counted also. Ambition opposed ambition, and amidst its agitations the convention was held together "by scarce a hair," as Luther Martin has informed us.¹ Nothing but the apprehension of counter-revolution could have arbitrated with success between those jealous parties. The compromise deserves attention, for it was the mud-sill of their new Federal structure. It was agreed that all free persons should be admitted into the Federal number, and such a proportion of slaves as would produce, according to the estimate, an equal division of Federal power between the North and the South. The three-fifths fraction, which had been agreed to in Congress as an equal measure of taxation,

¹ "Constitutional Debates in Maryland," Elliot's Debates.

was applied to representation. So we find in the constitution that representatives and direct taxes shall be apportioned among the states according to that fractional standard. This arrangement in the outset did not produce the desired equipoise: it left with the North section the majority of the population according to the Federal number by the estimates of population made by the convention. But a compensation, or a solace, was not wanting to the South,—a dream, an illusive image, a phantasm, but a feature of the covenant illustrative of the deceitful contrivances of written governments in the United States. In 1787 strong tides of emigration were flowing from the North and East, where business had been broken up by the war, to the unoccupied and fertile lands of the South-West and South, the region of slavery. If the flow continued it would soon redress the inequality, producing either an equilibrium of Federal power, or a Southern preponderance in the government, growing out of its greater Federal numbers. Southern statesmen, dazzled with this bright prospect of empire in the Union, consented to the compromise, and those of the North, who with superior cunning had contrived the compromise, of course consented to it.

More distinctly than any statement or explanation, an encounter in the convention between Mr. Morris of Pennsylvania, and Mr. Butler of South Carolina, will place this question before the intelligent reader.

“Mr. Gouverneur Morris: If negroes are to be viewed as inhabitants, and the revision to proceed on the principle of number of inhabitants, they ought to be added in their entire number, and not in the proportion of three-fifths. If as property, the word wealth was right; and striking it out would produce the very inconsistency it was meant to get rid of. The train of business, and the late turn it had taken, had led him, he said, into deep meditation on it, and he would candidly state the result. A distinction has been set

up, and urged between the Northern and Southern states. He had hitherto considered this doctrine heretical. He still thought the distinction groundless. He sees, however, that it is persisted in; and the Southern gentlemen will not be satisfied unless they see the way open to their gaining a majority in the public councils. The consequence of such a transfer of power from the Maritime states to the interior and landed interest, will, he foresees, be such an oppression to commerce, that he shall be obliged to vote for the vicious principle of equality in the second branch, in order to provide some defence for the Northern states against it. But to come more to the point, either the distinction is fictitious, or real; if fictitious, let it be dismissed, and let us proceed with due confidence; if it be real, instead of attempting to blend incompatible things, let us take at once a friendly leave of each other. There can be no end of demands of security if every particular interest is to be entitled to it. The Eastern states may claim it for their fishery, and for other objects, as the Southern states claim it for their peculiar objects. In this struggle between the two ends of the Union, what part ought the Middle states in point of policy to take? To join their Eastern brethren, according to his ideas. If the Southern states get power into their hands, and be joined, as they will be, with the interior country, they will inevitably bring on a war with Spain for the Mississippi. This language already is held. The interior country, having no property nor interest exposed on the sea, will be little effected by such a war. He wished to know what security the Northern and Middle states would have against this danger. It has been said that North Carolina, South Carolina, and Georgia will, in a little time, have a majority of the people of America. They must in that case include the great interior country, and everything was to be apprehended from their getting power into their hands."

Mr. Butler replied to Mr. Morris:

"The security the Southern states want is, that their negroes may not be taken from them, which some gentlemen within or without doors have a very good mind to do. It was not supposed that North Carolina and South Carolina and Georgia would have more people than all the other states, but more relatively to the other states than they now have. The people and the strength of America are evidently bearing southwardly and south-westwardly."

Whilst the Articles of Confederation were being framed the Continental Congress had to contend with this troublesome subject. The states being equally sovereign,—the dwarf being equally a man as a giant,—Congress had found it necessary to establish among them an equality of suffrage, the effect of which, from the greater number of Northern states, was to create a Northern preponderance. The South would not proceed with the constitution unless, in a certain class of important cases, that majority were subjected to restraint. To accommodate that difference the following section was inserted among the Articles: "The United States in Congress assembled shall never engage in war, grant letters of marque and reprisal in time of peace, nor enter into any treaties of alliances, nor coin money nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and general welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine states assent to the same. Nor shall a question or any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled."

The objection to that form of a sectional equilibrium or negative power was two-fold : it did not contemplate an increase in the number of Northern states, whilst it might be disregarded by a majority in Congress fraudulently assuming to act on questions which demanded the vote of nine states. This was no theoretical objection. It had been done when John Jay, as Secretary of State, proposed, with the consent of a majority of Congress, to make a cession to Spain of the navigation of the Mississippi. The question assumed a threatening aspect, and the negotiation was arrested, but it none the less exposed the imperfection of the provision as a constitutional security.¹ In the Virginia Convention of 1788, when the navigation of the Mississippi was debated, upon which the vote of Kentucky, then a province of Virginia, depended, Patrick Henry bitterly reflected on Jay's conduct as corrupt, and Grayson united in the condemnation.

With this defective arrangement before their eyes the Convention of 1787 devised, as they supposed, an equilibrium not so easily upset or disturbed ; but the substitute proved to be even more worthless. We see the errors of our predecessors, but are blind to our own. The examples, however, are useful in pointing out the futility of imposed constitutional limitations upon a majority power. After a majority in the outset of the government had been awarded to the North—it was a part of the compromise—in order to adjust representation to the transfer of population, as predicted by Mr. Butler, it was a feature of the compromise that there should be a count of the population within three years after Congress assembled, and within every subsequent term of ten years. Colonel George Mason from Virginia, who had supported the compromise, remarked that the assumed population of the sections would place the government at first under Northern

¹ See Madison's letters.

control, but that a census would redress the inequality. The inequality was never redressed, but the Northern preponderance continued steadily and rapidly to increase. When, to disarm his opposition to the constitution, as it had removed the objection of Colonel Mason, that compromise, with its promises and hopes, was stated to Patrick Henry, with the intuitive perception of a statesman of practical genius he replied that the Northern majority in such a government as has been framed would find means to retain their superior populousness and invite more population from abroad, and thus hold fast to their power.

The new constitution was without power to have itself installed as the supreme authority in the Union, and must continue to be a lifeless body until acted upon by some superior external force. All that a State legislature could do, to help the new monarch to his throne, was to provide for the election of delegates to the House of Representatives, to choose two senators, and to appoint presidential electors. An abyss still separated the two constitutions. The Congress of the Confederation was the only power that had a semblance or pretence of authority to act throughout the Union. But in that case the Congress had no constitutional right to act, the Federal Articles making no provision for a revolution in government. Yet it did not hesitate to assume the required jurisdiction. As president of the convention, and by its unanimous order, Washington, on the 17th September, 1787, addressed to the President of Congress a letter submitting the constitution to Congress, an act for which the instrument itself had made no provision nor the Articles of Confederation given any authority. But the Congress, co-operating in its own destruction, and violating the organic law out of which it had arisen, sent the constitution to the legislatures to be submitted to conventions of the states. As soon as a ratification by eleven states had been communicated to Congress, that body,

on the 13th of September, 1788, passed a law declaring the first Wednesday in the succeeding January to be the day for appointing electors in the several states which had ratified the constitution ; that the first Wednesday in the next February should be the day for the electors to assemble in the states and vote for a president and vice-president ; and the first Wednesday in the succeeding March should be the time, and New York city the place, for setting up and starting the new government. Thus the chasm was bridged, thus the revolution in government was perfected,—the Congress of the Confederation in its expiring acts violating both the constitutions.

CHAPTER X.

THE SECTIONAL EQUILIBRIUM IN CONGRESS.



IN our second chapter, with some fullness, it was shown that the principle of self-government in America, so far as it was contained in the right of secession, the groundwork of the liberty system, was crushed out of the Federal constitution by brutal force : in a subsequent chapter, that previously self-government, in a more practical and developed form in the state system of government, created by the Federal Articles, had been overthrown by a conspiracy of politicians, the impotent voters being opposed to the revolution. In following the thread of this history, and in the progress of this work, it will be our task to discover now whether the equilibrium of sections, the untried substitute for self-government provided in the new constitution, answered its pur-

pose, or whether it too was destroyed by its enemies or perished of its infirmities. When we have ascertained that the equilibrium failed in design from these combined causes, the final inquiry will remain whether the sectional power, which immediately intruded in the place of this just arbiter, has governed the Union fairly and prudently; or whether, obeying the strong impulse of selfishness and ambition, its course of unchecked power has been characterized by abuses and wrongs to its dependents, which commonly proceed from illegitimate and unrestrained authority.

In 1789, as Hamilton previously had been, John Randolph, the young patrician and heir of Roanoke, had been attracted to New York city by the educational advantages which it offered. His distinguished social position in Virginia, as a shoot from the house of Bland, and heir to the name and great property of Randolph, united to splendid and diversified talents, introduced him to the society of the men who had come to inaugurate the new Federal apparatus. Thus it came to pass, as he said, that "he saw the young eagle take its flight."¹ The fourth day of March being the time appointed by Congress for the assembly of the two legislative bodies that were to be heir to its abdicated jurisdiction, a small number of senators and representatives appeared to take seats in the bodies to which, respectively, they had been delegated. From their fewness they could not execute the intention of Congress, and, being animated by a wish contrary to that which had actuated the convention at Annapolis, they adjourned from day to day persistently for twenty-seven days, which brought the first day of April, when, a sufficient number of members being present to form a quorum, the House of Representatives of the new Federal legislature was duly organized by the election of Frederick Augustus Muhlenburg of Pennsylvania to the chair of speaker,

¹ Garland's "Life of John Randolph of Roanoke."

thus, in the outset, securing to North section that stronghold in legislation. It was not until the sixth day of the month that the appearance of Colonel Richard Henry Lee, from Virginia, gave to the senate its quorum, which enabled it to elect a temporary president of the senate, that the ballots for president and vice-president might be counted, as the constitution directed. At first the prospect was disheartening, and the senators elect, who had assembled at the rendezvous, caused circular letters to be addressed to other senators elect, in the nearest states, urging their immediate attendance on Congress. But the members were so slow in dropping in, that as late as April 9th Mr. Tucker from South Carolina, of the House of Representatives, stated that he was the only member in that branch of the legislature from the entire region south of Virginia. Washington did not come to New York to help the new government by the authority of his presence, but, with a caution that was habitual where his own prestige or interests were concerned, hung back, reluctant to connect himself with an enterprise that looked so inauspicious. He did not leave "the shades of private life" until the senate, by its messenger, notified him of the successful organization of the government and of his election to the great office of president of the Union.

The tardiness shown by the members of Congress in repairing to New York is referable to a cause which deserves a place in history, as it betrays the irresolution of the victorious party, and their doubts of an ability to inaugurate the new government 'after the prize of ratification had been won. The cause of the irresolution, of the doubt, of the hesitation, was the conditional ratification which the constitution had received in New York, connected, we must believe, with the indignation which possessed the public mind produced by the betrayal of the representative trust by which the constitution had been carried through

the Virginian and other conventions. But there was another cause combined with those causes. When a ratification was about to be procured at Richmond by means so illegal and immoral, Patrick Henry announced his purpose to withdraw from the convention, and "go home" to call upon the people to resist a yoke about to be fastened upon them by the Federal party. He did not go home. He did not raise the standard of resistance, which would have crushed the viper before it was fully hatched. And now we come to the politician again. George Mason of Gunston Hall, whom nature had made for a hero, had grown cautious with advanced years. He refused to unite in Henry's brave policy, and the moment was too critical to hazard by disagreement the unity of the States Rights party. Mason's plan, which was adopted, was to suffer ratification to run its course, but, by concerted action, to prevent an organization of the government in the mode which was attempted, which it was supposed the superior strength of the Anti-Federalists in the states could effect. It was a dilatory and weak policy, and was naturally rewarded with failure. The crisis called for action, before which the coward Fraud would have slunk away; but Mason met it by intrigue, in which he was no match for the practised Madison and his handy lieutenant. The Anti-Federalists from every state met for consultation in Richmond and adjusted a line of action, but it broke down as soon as Lee made a quorum for the senate, and a soldier became president of the Union. The new Federal power was prepared then to take the field against its enemies, and establish courts for the punishment of treason. So resulted the expiring opposition to the Constitution of 1787, until President Davis attempted to overthrow the usurper. Let it stand for a monument of the triumph of banded politicians over the unorganized masses of the people, whose servants they profess to be, but whose masters they are.

It would have been a contradiction in politics for the constitution to ordain population as the basis of power—the constitution being an ordinance intended to control the government—and at the same time to confer on it jurisdictions which would enable it to disturb so fundamental compromise as the equilibrium of sections. Unless the fathers of the new-made or new-plumed Republic were very inexpert artists, every part of their work must have been designed with reference to that foundation, for the sections, in their wide-extended arms, embraced every interest in the Union. Every compact of the constitution and every understanding must have been subordinate to it, and every construction must have yielded to it as a master rule, for it is absurd to say that a constitutional superstructure is to have no relation to the sub-structure. It is a matter of history, if we are so to class the Madisonian Debates, that as soon as sectional power in the assembled states was touched the strongest passions were aroused. On the authority of Madison it is currently stated, and generally believed, that the compromise of senatorial representation was the most difficult compact in the constitution to adjust, but, on the better authority of his reported debates, we know the fact to have been otherwise. The sections, as the constitution and its history show, were the real parties to the Union, the states being but their subordinate parts, and what Morris declared in his encounter with Butler is sufficient to prove it. But if other evidence be sought to establish the same fact, it may be found in a speech of Madison in the convention, when he advocated the fractional basis of three-fifths because it would establish an “equilibrium” between the North and South. If we understand the constitution by the light of its own words, as they flowed from the pen of Gouverneur Morris, we cannot fail to be struck with the fact that no jurisdiction or authority is conferred on Congress to enable it to interrupt the flow

of population, none to create employments to attract it to particular sections or to hinder its egress from them. It is true the ninth section of the First Article prohibits Congress from forbidding emigration, or importation, of such persons as the states may choose to admit, prior to the year 1708, but authorizes to be collected a tax or duty of ten dollars on each person so imported. But Madison's reported debates explain this anomalous feature in the constitution. The foreign slave traffic, which the article embraces, though it would appear not to be confined to it, would have been stopped by an edict of the constitution, in accordance with Virginia's earnest desire, but for the energetic and combined remonstrance of Massachusetts and South Carolina, those old associates and partners in smuggling and the slave trade, the consignor and consignee in that profitable business. South Carolina said a plentiful supply of cheap slaves brought to her doors was necessary to the drainage of her rice swamps, which occasioned an enormous consumption of life, whilst the Puritan, who stood at the other end of the line, frankly stated that the new constitution would not receive a vote in New England if it closed that source of opulence. The times, he said, were hard, and if his people were to be deprived of the slave trade, as they had been damaged in other branches of their external commerce, they would be compelled to go into bankruptcy. It was this double consideration which caused the exception to be admitted in the constitution. It was a compromise which the Federal party made to get votes for the constitution, but was a departure from the sectional compromise, and stood on its own grounds. But it was an equippollent force. If it gave population to the South, it gave a corresponding measure of wealth to the North. It did not produce a sensible disturbance of the arrangement between the sections, because of the death-rate mentioned by Cotesworth

Pinckney, who stood manfully by the slave trade ; for men die, but money lives. That this would be the result was known to the convention when it stamped the constitution with an approval of a commerce which the morality of a subsequent Congress treated as piracy—an ungenerous judgment for the heir to pronounce on the ancestor from whom he inherits the estate. But the practical fathers thought it more politic to license the slave trade than to incur the enmity of the American Puritan.

When we revisit the fountains of the great Republic we experience the emotions of a Humboldt as, amid the eternal rocks of the Andes, he stands at the head-springs of the Amazon, or of a Stanley as he discovers, in the swamps and jungles of Africa, the mysterious sources of the mighty Congo river. But before we trace the impetuous flow of that great stream of political life, a criterion of success must be agreed on. Edmund Burke says liberty in itself is not good ; its quality depends on the circumstances which accompany it ; and the same may be said of every form or development of political power. The working of the Republic may be regarded as successful if grants or prohibitions of power in the constitution and laws are respected, and the weak, equally as the strong, receive patronage from a great and bountiful sovereign. This reasonable test mankind jealously apply to monarchy, and justice applies it to the Republic of the United States. Our first inquiry would naturally be, whether the important and fundamental compact of sections, inserted as a foundation in “the great treaty,” as the constitution has been well called,¹ was observed by the first Congress whose “annals” we open now for inspection.

Without doubt it is remembered by the reader that

¹ “The Union, Past and Present, &c.,” by Hon. M. R. H. Garnett.

notoriously and avowedly the protection of the sectional equilibrium was not afforded to the South section in the start of the government, nor for three years, when a census would be taken, the Southern delegates and ambassadors being content during that interval to intrust their country to the honour of the slave-traders and smugglers of the old Norse land and its natural allies, as Gouverneur Morris represented the strictly Northern Middle states as being,—a thing which they would not have done in respect to the slightest of their private concerns. Ambassadors less credulous where the stakes were empire, would not have trusted those severe moralists, without a sufficient security, for one session or for one day of Congress, the Congress being armed with the mighty powers of legislation, unchecked in their exercise except by the words of a charter which they might construe or bend about at pleasure; for the mind that construes, not the hand that writes or the will that adopts, is the true law-maker. Sage ambassadors would have objected that the equilibrium if established finally, and it be allowed to arbitrate between the sections, it may come too late, for it is not in the nature of a negative force to repeal fatal or injurious statutes. Perhaps South section trusted that as Washington, witness and party to the solemn covenant between the sections, would be the first president, he would protect the agreement by his veto. If the Pinckneys and the Butlers, with the Randolphs, the Madisons, and the Masons, so believed and so trusted, they leaned on a broken crutch. Hamilton, in his Report on the Finances, dictated and outlined the domestic policy of Washington's administration, of which he was the day-star and glory. The inaugural address did but utter truth when it said of the president's civil faculties: "That he had inherited inferior endowments from nature and was unpractised in the duties of civil administration." Inexperience, igno-

rance, and a blind trust made him the pliant tool of Secretary Hamilton and a compact array in Congress, the Northern phalanx—as soon it got itself called, with its lances turned always to the enemy—that worked in concert with him, to subject, through the silent and irresistible agency of law, South section to North section—the reluctant, bitter, exhausting servitude of the purse. When Alexander Hamilton was a member of the old Congress, he said: “I know General Washington intimately and perfectly.” That intimate and perfect knowledge acquired in the camp, where the hearts of men are seen, by that magician’s skill in reading the characters and influencing the acts of others, became the means by which the executive power of a great government was made subservient to the designs of a mercenary and grasping congressional faction. In his analysis of the principles of government, Calhoun instructs us that monarchy is moved by power, but the republic by influence; and we have before us the example of an unhappy people destroyed by influence. Not altogether; influence went before, but the pitiless sword completed its unfinished work. Oh! far better Cæsar with his legionaries, or Cromwell with his pikemen, for oppressed and ruined South section, than a president girded and guarded by a phalanx of politicians intercepting the light from shining on their prisoner’s soul. Cæsar would have restrained her liberty, but preserved her independence: Washington destroyed both.

The first and hardest blow struck at the equilibrium of sections by the Northern phalanx, was the enactment of Federal duties to protect Northern manufactures and shipping from foreign competition in the American markets. The avowed object of that unexpected and unprecedented policy in the Union was to afford a monopoly of the domestic market to the classes engaged in those industries to the extent

of the home supply. The profitable occupation thus afforded in every town and district of the East and North at once stopped the outflow of population moving to occupy vacant lands in the Slave section, as was foreseen and predicted by Patrick Henry. The bountiful hand that gave millions of wealth to North section gave also to that favoured part of the Union the means of maintaining its ascendancy in the government, for it was in a condition to receive that great boon from Congress; whilst to the other section a protective policy was valueless; facts fully appreciated by the sectional majority, as soon we shall hear from one of their leaders. During the period intervening between 1783, when the war closed, and 1789, when the reform government was set in motion, manufactures had been established on an enlarged scale in the North and East, fostered by state laws. They produced all the necessary and ruder articles of consumption, such as Adam Smith tells us will spring up in a country without encouragement from government, out of the accumulations from other employments, if capital and labour cannot be more profitably engaged. In the South section, blessed with a softer climate and richer soil, with a plentiful supply of labour, agriculture engaged and rewarded the industry of every hand and the expenditures of every purse. Whilst it afforded homes to those engaged in it, it was an agreeable, independent, and profitable occupation. There the protective system of Hamilton and his phalanx operated as a burdensome tax. If the Southern consumer used Northern manufactures, or hired Northern ships, he increased Northern wealth and multiplied the inducements of the Northern emigrant to remain at home; but if he hired a foreign ship, or purchased the products of a foreign loom or forge, he paid a tax to the government to the exoneration of the Northern tax-payer who used the domestic manufacture. For this heavy burden upon the South

the government provided no compensation, but offered only broken covenants, disappointed hopes, and blighted prospects. A cotemporary record places this subject in the strongest light, and affords additional weight to the arguments of Honourable John Randolph Tucker and his associates in debate in their able attacks in Congress upon tariffs of protection. It consists of a speech of Oliver Ellsworth, in the Connecticut Convention of Ratification, who thought it more effective to debate the constitution as it would operate upon the personal fortunes of his hearers, and points the road to wealth and political control if the constitution were adopted. He had been one of the framers of the constitution, and, by consequence, was a Federalist in politics. Later Mr. Ellsworth was a senator in Congress, and by force of his position and talents a head man in the phalanx, and afterwards was the Chief Justice of the Supreme Federal Court. His words possess, therefore, a peculiar significance. Mr. Ellsworth said :

“In these states we manufacture one half our clothing, and all our tools of husbandry ; in the Southern they manufacture none, nor ever will. They will not manufacture, because they find it more profitable to cultivate their lands, which are exceedingly fertile. Hence they import almost everything, not excepting the carriages in which they ride, the hoes with which they till the ground, and the boots which they wear. If we doubt the extent of their importation let us look at their exports. So exceedingly fertile are their lands, that one hundred large ships are every year loaded with rice and indigo from the single port of Charleston. The rich return of these cargoes of immense value are to be all subject to the impost. Nothing is omitted ; a duty is to be paid upon the blacks which they import. From Virginia the exports are valued at one million sterling per annum. The single article of tobacco amounts to seven or eight

hundred thousand. How does this come back? Not in money; for the Virginians are poor to a proverb in money. They anticipate their crops; they spend faster than they can earn; they are ever in debt. Their rich exports return in drinkables, eatables, and wearables. All these are subject to the impost. In Maryland their exports are as great in proportion as Virginia."

As soon as the political machine was ready for work, Madison, now a member of the House of Representatives,—he had been defeated for the senate by Grayson,—brought forward the scale of duties proposed by the Congress of 1783 to the states, simply a revenue tariff, which would start the government on the track of free trade. His reasons were given in the language of moderation and justice, but were not received with favour by the Northern phalanx. There were men who had come to the Federal rendezvous with very different objects from enacting revenue tariffs. They saw, lying at their feet, a helpless victim, with fields teeming with the materials for an export trade, as described by Oliver Ellsworth, and they were determined to use all the powers of the government that construction could afford to make it pay heavy tribute to North section on the return cargoes. In that rough school of experience—the South section would learn in no other—they would teach Southern statesmen the meaning of American liberty (a new production in the world), the value of representative institutions, and the great prize awarded to the North in a Southern president—a Southern man with Northern principles. With insulting scorn they pushed aside Madison's five per cent. *ad valorem* tariff, and constructed one bearing the title of "protection," and designed to enrich, as well as to support, the principal branches of Northern industry. In debate this object was avowed. Mr. Hartly of Pennsylvania proclaimed that he desired the protection of the in-

dustry and capital of the North to be adopted as a fixed policy of the new government, whilst the opinion was echoed along their ranks by the phalanx acting as chorus. Massachusetts, aglow with the zeal of avarice, pressed to the front to have a hand in originating the legislative spoil system, being devised for the impoverishment of the neighbours and countrymen of Washington, whilst he was occupied with settling a Court etiquette. Massachusetts said she was not willing to be taxed on the importation of molasses, from which she made rum, but demanded that her own rum should be fenced about from competition with Jamaica rum, which, though of a superior quality to her own, could be sold cheaper in the American market. Molasses was connected with the two most profitable employments which her people then carried on—the trade in fish to the West Indian Islands, and the trade in African slaves (the Moors), which they sold to the Southern planters. Fisher Ames, the orator of the first Congress, explained the whole business.¹

Their summer fish were vended to the West Indian planters as food for their slaves, and molasses was taken in exchange. That was converted into rum, at the distilleries of New England, and with it slaves were purchased for Carolina and Virginia from Guinea, Loango, and the mouth of the Congo. Pennsylvania sought protection for manufactures of steel, which, it was insisted, could not maintain themselves without help from government; nor could her paper mills, which annually turned out seventy thousand reams of paper. Connecticut had manufactures of woollens and manufactures of cordage, which humbly

¹ When the French Directory demanded money from the United States, Fisher Ames, who was in Congress, exclaimed, in one of the finest utterances of the orator, "We have millions for defence, not a cent for tribute." The sentiment electrified the Union, and unmasked a regicide Republic.

she petitioned the All-Giver to protect; for, she said, unless the American consumer were made to pay for those articles a higher price than that for which they could be purchased in the general market, those "infant industries" would perish. New York, by the voice of Mr. Lawrence, demanded that every article which her people were able to manufacture should be protected by custom-house duties.

It is obvious that those interests stood in direct opposition to commercial retaliation, the purpose of which was to make free trade the object with the renovated and invigorated Federal nation. Propositions having retaliation for an object, the phalanx, with all its influence and power, discountenanced and voted down. The whale and cod fisheries, also patronized by the Puritan branch of the phalanx, were surfeited by Federal bounties. But the great interest fostered by the generous and omnipotent patron was navigation, from the fishing-smack to the largest vessel of commerce. The statute-book groaned under the weight of tonnage duties. By this legislation the perishing agriculture of the South was pressed to the earth by unaccustomed burdens, that Northern industry might prosper exceedingly, and the flow of population southward be entirely stopped by the time the first census came to be taken, and new estimates of Federal power made,—the ambitious, ultimate object of Hamilton's tariff of protection.

Mr. Bland, from Virginia, explained the operation of the protective tariff: "You certainly lay a tax on the whole community, in order to put money in the pockets of the few, when you burden importation with a heavy impost."

We will now cast an eye upon the condition of Southern agriculture upon which these new weights were imposed. Mr. Tucker, from South Carolina, protested against the projected protective system, and presented a dolorous picture of agriculture at home

upon which the phalanx were binding new burdens : "The situation of South Carolina was melancholy ; while the inhabitants were deeply in debt, the produce of the state was daily falling in price. Rice and indigo, decreasing in value, were becoming so low in price as to be considered, by many, objects not worthy of cultivation." But indigo and rice, as the expression was understood by the phalanx who had usurped the legislation of the Union, did not belong to the class of American industry. The South section, thus impaled by the phalanx, looked to the executive veto for protection, but the despotic Hamilton controlled the veto, though Washington officially held it.

At a later period of this examination the reader will be informed in what manner the phalanx acted when Benton, the senator from Missouri, at this time an Indian wild, proposed to embrace indigo in the list of protected articles, as if to make proclamation to the nations how unworthy to govern society an elected majority is, and how disastrously the selfish principle works in government. At the bottom of every political organization there is a vigorous life-principle which assuredly will make itself felt, and its goodness or badness is to be judged by the result. Monarchy is based on the parental principle. Like a mother, it cherishes the feeble as well as the robust ; whilst the Republic is moved by the strength of majorities, who neglect all interests but their own. In the language of Satan in the poem the majority proclaims :

"Riches are mine, fortune is in my hand ;
They whom I favour thrive in wealth amain,
While virtue, valour, wisdom sit in want."

Let us turn to the Constitution of 1787 to discover whether the sectional legislation of the first Congress derived any colour of authority from any of its provisions—for our subject demands from us an examination of a fundamental law. First, and mainly, we

will examine that part which invested the new government with a jurisdiction to lay and collect import duties, the principal tool with which the phalanx laboured. That power, we find, was treated as a branch of the taxing apparatus, and was conferred for the attainment of objects legitimate to other taxation. The purpose of the taxing authority is particularly stated in the constitution to be: "To pay the debts, provide for the common defence and general welfare of the United States." For the attainment of these objects Congress is invested with power "to lay and collect taxes, duties, imposts and excises."¹ These are words of limitation, as every enumeration is, and they cannot fairly be taken out of their just meaning. They were not intended to confer, and do not confer, power to make the consumer pay, through the operation of protective tariffs, an additional price that the producer may become wealthy and his section powerful. Among the objects proposed by Federal amendment that was never stated to be one.

To pay the debts of the United States, and enable government to comply with other demands on the treasury, was the avowed and only object of the states in the cession of the custom-house to the central authority. It contemplated, as we are aware, no other purpose. It was believed a five per cent. *ad valorem* duty would produce the greatest amount of revenue, the point in the scale of duties which the partizans of free trade contend it is the duty of Congress to search for. Mr. Ellsworth estimated that that duty would give Congress two hundred and forty-five thousand pounds sterling, which, he affirmed, would pay the entire interest on the foreign debt, and satisfy almost every other current national expense. But for the obstructive temper of the Governor of New York, or more likely his pursuit of an unavowed policy, that

¹ Article I. section 8.

free trade tariff would have been established by an edict of the constitution for twenty-five years, which would have determined the commercial policy of the Federal nation, and established on firm ground that branch of American liberty. The schedule embraced all the articles produced by the manufactures of that day which entered into the American import, and practically would have ousted the legislatures of their jurisdiction over the custom-house. We cannot doubt that from 1783 to 1787 the states were solicitous to establish free trade as the law of their union, and make it the foundation of their new organization, and, by the vindictive power of retaliation, to compel foreign tariffs, so far as they concerned America, to conform to that policy. Slight obstacles divert the impetuous flow of the Mississippi, as the ill-humour of Governor Clinton turned from its course the powerful current of opinion which the philosopher of Kirkcaldy had originated in America by the invincible reasoning of the "Wealth of Nations." Twice has America endeavoured, by a fundamental ordinance, to declare free trade to be the policy of the Union, and twice have the politicians baffled her. Nobody contended that it was the mission of Federalism to establish monopolies in the land, but, on the contrary, to render free trade the common law of the great West.

In 1781 Jefferson states the policy of Virginia in respect to foreign commerce, and afterwards, when President Washington's Secretary of State, he repeated, almost in the same words, the policy to be applicable to the Union: "Our interest will be to throw open the doors of commerce and to knock off all its shackles, giving perfect freedom to all persons for the vent of whatever they may choose to bring into our ports, and asking the same in theirs." In one breath, by one of his mouths, Hamilton makes Washington utter the sentiment of a protectionist, but

Jefferson, another of his mouths, commits him to the most latitudinous free trade doctrines. So imperfect were the President's ideas on which to conduct a government, or so great his desire for popularity, that he introduced the leaders of the opposite factions in his cabinet. But he learned better after a while, and then threw himself wholly into the arms of the Northern phalanx.¹ It is from Madison's speech, in the first Congress, that we extract the fullest expression of views on the policy on which he contended the new government was pledged to be embarked :

"In the first place, I own myself to be a friend to a very free system of commerce, and hold it as a truth that commercial shackles are generally unjust, oppressive, and impolitic ; it is also a truth that, if industry and labour are left to take their own course, they will generally be directed to those objects which are the most productive, and this in a more certain and direct manner than the wisdom of the most enlightened legislature could point out. Nor do I think the national interest is more promoted by such restrictions than the interest of individuals would be promoted by legislative interference directing the particular application of its industry. In my opinion it would be proper also for gentlemen to consider the means of encouraging the great staple of America—I mean agriculture—which, I think, may justly be styled the staple of the United States, from the spontaneous production which nature furnishes, and the manifest advantage it has over every other object of employment in this country. If we compare the cheapness of our land with that of other nations we see so decided an advantage in that cheapness as to have full confidence of being unrivalled. With respect to the object of manufactures other nations

¹ This was the real cause of the ejection of Secretary Randolph from Washington's cabinet. See the "Life of Edmund Randolph," by Moncure Daniel Conway.

may, and do rival us; but we may be said to have a monopoly of agriculture. The possession of the soil, and the lowness of the price, give us as much a monopoly in this case as other nations and other parts of the world have in the monopoly of any article whatever; but with this advantage to us, that it cannot be shared or injured by rivalryship.”¹

Agriculture being embarked on the same bottom with free trade, Madison, with his accustomed ability, states the policy upon which the planters and farmers of America desired their Federal government to enter; and to enable it to do so was the principal object of the new constitution. From the view heretofore taken of opinion in the states, as well as of the action of the Congress of the Confederation and the legislatures, every advocate of the new constitution was justified in the belief that the amended Federal power would adopt the mixed taxation which, in 1783, Congress had recommended to the state legislatures, and which Madison, in part, proposed to the new Congress in 1789—those very taxing powers, except in larger measure, having been given in the new constitution which before had been so earnestly solicited by the Congress of the Confederation. There is no reason to doubt that such was the understanding of both the political parties whilst Federal reform was agitated, and that it was the understanding of the Federal party when they made the Constitution of 1787. In aid, indeed in confirmation of that presumption, there is a fact lying on the surface of the Constitution of 1787, when we are made to understand what it signifies, and why it was placed there. That fact is as a device emblazoned on a shield; it is a cipher left in the constitution to explain its meaning on this interesting point. We know the slave trade, as long as it was the principal commercial interest of the North

¹ “Annals of Congress,” vol. i.

section, and until other industries grew up to take its place, was licensed by the conscript fathers, and that during the period of toleration a tax, or duty, of ten dollars on each person imported was allowed to the Federal treasury. It was a tax for revenue, as Mr. Ellsworth testified in the Connecticut Convention, and this is the history of it. It was agreed among the experienced slave-traders and slave-buyers, who founded the American Republic and organized its fundamental law, that a duty of ten dollars on each imported negro slave would amount to a five per cent. *ad valorem* duty on the average price of a slave at the American port of admission. By this expedient it was intended to tax the slave trade with the horizontal duty designed to be exacted from other branches of the import commerce. This fact, lying so prominent on the surface of the constitution, decides the question of intention as to the establishment of free trade as a national policy; but we are surprised that, in a written government, no security should have been taken to compel an observance of it. But those statesmen, in their inexperience and simplicity, and knowing that the taxing power had been conferred in the constitution only for purposes of revenue, trusted to the power of words, to the honour of statesmen, and to the restraint of an official oath. It stands on the most reliable testimony that such was the meaning of the ten-dollar tax. Elias Boudinot, from New Jersey, though not a member of the Convention of 1787, was a great man of the North section in the Congress of 1790, and understood very well what he talked about. Mr. Boudinot said: "He was well informed that the tax, or duty, of ten dollars was provided instead of the five per cent. *ad valorem*, and was so expressly understood by all parties in the convention."

Rawlins Lowndes, in the Convention of South Carolina, opposed the constitution with zeal, courage, and ability, predicting the disasters and humiliations which

its acceptance would bring on South Carolina and the rest of the slave region. In his indiscriminate warfare he attacked the ten-dollar tax on the import of persons, because, as he averred, there was no corresponding imposition laid on the imports of North section. Pierce Butler, who broke no inglorious lance with the intellectual Gouverneur Morris, having been at the gendering of the constitution, replied to the exception taken by Mr. Lowndes. "The ten-dollar tax," he explained, "was intended to pay the five per cent. impost."

The lawyers have a wise proverb, that "The execution is the life of the law," so that the actual force of a written constitution is the interpretation which it receives when it comes to be put in action. We do not resort to the utterances of the dead fathers, as to the tomb of a revered saint; we go to the statutes, and the courts, and there we find a protective system standing immovable on a foundation of free trade. That is what the constitution practically is. In verification of the conjoint testimony of the constitution, and the history which preceded and accompanied it, I cite with pleasure and respect the authority of Honourable Samuel J. Randall, a protectionist leader in Congress, and at this day a great man of North section. In a speech which not long ago he made in Kentucky, in the city of Louisville, the able and distinguished statesman said: "I do not believe there is in the constitution of the United States an authority to levy import duties for protection's sake; I can find nothing which gives authority to Congress to raise taxes on imports for protection *per se*." This admission is enough for the argument, as the title of Hamilton's and Washington's tariff was "protection for American industry," and that, Mr. Randall admits, was without the authority of the constitution. When the lost cause of free trade was a militant power, Calhoun, the champion of every distressed truth, challenged the

Protectionist party in Congress to enact a law laying duties avowedly for protection, declaring that its constitutionality would be contested in the Supreme Federal Court. The challenge was not accepted, and, with honourable frankness, Mr. Randall supplies us with the reason. John Marshall, in the glory of his great intellect, then presided in the Supreme Court, and Cain, the fratricide, could have had a fair trial at that bar, and, more assuredly, a section of the Union oppressed by the burden of unconstitutional taxes. The party of legislative spoils preferred a disingenuous, but safer course. They entitled their spoliation bills "revenue" tariffs, and under that cover and false pretence—that lie—by discriminations introduced protection. It is but the highwayman turned into the pickpocket.

It was but adding an insult to an injury when the phalanx borrowed from the British navigation law the old badge of colonial subjection, the principle of their American system. That famous statute of Parliament, as Burke and Adam Smith explain it, was founded on the principle of colonial monopoly: its avowed object being in favour of the British manufacturer and shipper to exclude the foreigner from participating in the import and export trade of the colonies. The export, by an interdict of the constitution, the phalanx were forbidden to touch, but those skilled economists knew that, by an understood law of trade, the export goes with the import, and that a nation cannot receive the one without it supplies the other. As the upshot of the revolution South section discovered, under the operation of this new protective system, that they had been remitted to the old commercial vassalage, but under a harder master—"The American system"—which made them aliens and outcasts of the law in their own homes. With that code of commercial exaction, dignified with the name of liberty, the South resembled a slave dressed in the shining robes of

Harlequin. After the Stamp Act and its kindred enactments were all repealed, leaving only the quiddity of the tea duty to stand as a claim of empire, the navigation laws were the only grievance of the colonies, and, logically, Daniel Webster attributed the revolution to them. But the monopoly was greatly mitigated by the contraband trade, which, being justified by American opinion, was conducted along the entire seaboard upon the most extended and prosperous scale. It was the overflowing of a surcharged river, and Burke excused it in Parliament. There was no semi-independent nation at every creek and harbour—as during the reign of the navigation laws, conniving with the smuggler and sharing his profits—to lighten the weight of the American law. Oliver Ellsworth, as a Connecticut man, assumed to speak for New England, and said: “Smuggling is a business too well understood among us, and is looked upon in too favourable a light”; and the debates in the first Congress disclose the fact that many an old smuggler was marching in the phalanx. Characters, who should have been condemned to the galleys, were legislators in a regenerated Republic; and Boston, now the seat of culture and wealth, was, at the period of which I write, little better than a nest of smugglers and slave-traders,—when John Adams spouted liberty in Faneuil Hall. Wise governors of nations and empires—by exemptions and bounties, and even by custom-house duties, when the protected employments are seated in the midst of consumers who, by a reflux wave, partake of the created prosperity—cherish particular branches of industry to render a nation independent of the foreign supply, exposed to the vicissitudes of war or non-intercourse; but they do not, by a code of blackmail, outlaw non-protected industries. Not Rob Roy, when he lifted cattle in the Lowlands, was more a spoliator than the import and tonnage duties of Congress have been to the plantations of Carolina, Georgia, and Virginia.

Calhoun called those duties brigades sent forth each season to harvest the crops of the South into the garner of the North, and his language was not too strong. At first, as whining mendicants and suppliant beggars, those "infant" industries knocked at the doors of Congress; but grown wealthy and strong, the sturdy beggars demand protection as a right, and the government is embraced and smothered by the clasping arms of such parasites. Honourable John Randolph Tucker, of Virginia, and Honourable Frank Hurd, of Ohio, two able and disciplined champions of free trade in Congress, inform us that the greatest enormities of the protective system are to be found in the existing tariff statute, which we know a great money power, grown up like an upas tree in the Republic, prevents from being repealed or materially modified. A momentous fact has worked to the surface of American politics: not the multitudinous voters of the North and West control the Republic, but their money centres and machine politics abet and confirm the unlineal sway. They control the Congress, the courts, the legislatures, and even the sovereign ballot; for when a presidential election comes around in its short cycle of four years, a purse is made in New York or Philadelphia, with tributary streams from other sources, to purchase pivotal states, and the transaction is as open, and deemed as honourable by local opinion, as any of the Exchange, or as the sale of the empire in the camp of the Pretorians was looked upon in degenerate Rome. Such is American liberty at the close of the first centennial era; such the slums and pools of nastiness into which it is dragged! The Republic is yet in the green tree, but when autumn arrives, with its sere and yellow leaf, the soldier will camp, not near the Capitol, but in the Senate House.

The protective system did not stand unassisted to check the outflow of population from the Northern hives. The funded debt of Congress, as stated by

Secretary Hamilton, created a cash capital in the North to be embarked in all profitable enterprises, and was rendered more available and powerful by a national bank, branching into every state, for which, as is now agreed, there was not the slightest warrant in the constitution. A proposition had been made in the Convention of 1787 to empower Congress to charter a Federal bank, but the power was peremptorily denied to Congress. This fact appears from the record of the proceedings of the convention kept by Judge Yates, a deputy from New York, until Federalism drove him in despair from that body. But no trace of it can be found in Madison's report of the debates and proceedings of the convention. Did he expunge it from his notes because he too when president had signed a bank bill? The fact must have been remembered too by Hamilton, when, in his report, he advocated the constitutionality of a bank law; and by Washington also, when he signed the legislative bill recommended by Hamilton. Alas! alas! all politicians are alike.

The slavery restrictions applied to the territories of the Union, a legacy from the Confederation, was another policy by which the representative power of South section in the Federal government was still further curtailed. There was a convulsive effort made by the South to obtain and preserve an equilibrium or balance of the states in the senate, but it resulted finally in victory to North section. The contest began with the application of territorial Missouri, whose constitution legalized slavery, to be admitted as a state of the Union. The slave power triumphed in that case, but a compromise, a black line, coinciding, it was contended, with a climate line, was drawn through the territories of the nation which the slave was forbidden to cross, as though the climate line, had it existed, was not sufficient. As an equivalent to Missouri, Maine, a part of Massachusetts, was admitted as a

free soil state, Massachusetts in the ardour of party strife submitting to dismemberment. For a time it was the policy of Congress to admit the states in pairs, in accordance with which rule or compromise Michigan and Arkansas, arm in arm, entered the Union. Benton in his "Thirty Years' View" gives an interesting account of that fierce struggle.

Never was a more splendid marriage portion given than North section received at the hands of the new government. The constitution conferred on it power, the phalanx gave it riches. No one can comprehend the Republic of America who does not understand it as made by the constitution construed by the phalanx. When President Lincoln sent armies and navies to do his bloody work of coercion the Southern people could understand it, for other nations had been consumed by the torch and smitten with the sword; but they did not comprehend, and do not now comprehend, how their ruin was accomplished in accordance with a system of self-government and liberty.

By many letters, found in his correspondence, President Washington was informed of angry discontents produced in Virginia by the sectional legislation of Congress. One of those letters said: "If Mr. Henry has sufficient boldness to aim the blow at the new government which he has threatened, I think he cannot meet with a more favourable opportunity; but I doubt whether he possesses so adventurous a spirit." Harry Lee, the father of the Confederate General Robert E. Lee, was a staunch friend of ratification. He had served the Federal party in the Virginian Convention, and was a representative which it sent to the first session of the new Congress, but he had returned home in ill-humour with the power which he had helped to install, and, with the ready hand of a soldier, was prepared to undo his work. A correspondent from Virginia of March, 1790, writes to the President in this agreeable vein: "A spirit of jealousy,

which may become dangerous to the Union, towards the Eastern states, seems to be fast growing up amongst us. It is represented that the Northern phalanx is so firmly united as to bear down all opposition, whilst Virginia is unsupported by those whose interests are similar to hers. It is the language of all I have seen on their return from New York. Colonel Lee tells me that many who were warm supporters of the government are changing their sentiments, from the impracticability of union with states whose interests are so dissimilar to those of Virginia. I fear the Colonel is one of the number." But the leaders of the Federal party got together, surveyed the prospect, and assured General Washington that his government would not be disturbed. Henry, they said, had grown old, and was too much engaged with making money to embark in another revolution.¹ So the phalanx continued to raven South section, with the co-operation and approval of the father of his country.

Before we take leave of it, we will have another look at the equilibrium of sections. It was accompanied and balanced by an equilibrium of direct taxation, both made to depend on a count of the people. George Mason, the lord of Gunston Hall, made a census the condition of his support of the compromise. He was certainly an able speaker, and in those days was called a wise man. I quote his words: "Without it the Southern states will have three-fourths of the people of America within their limits, yet the Northern will hold fast to the majority of representatives. The Southern states will complain, but they may complain from generation to generation without redress. Unless, therefore, some principle which will do them justice be inserted in the constitution, disagreeable as the declaration was to him, he must

¹ A note to Sparks' "Writings of Washington."

declare he would neither vote for the system here, nor support it in his state." As so great importance was attached to a census, the inquisitive and watchful reader will inquire what precautions were taken by the convention to secure in the sections a correct enumeration of their population. When representation came to be apportioned in the constitution between the sections as a temporary basis of Federal power, the Southern members accused those from the North of making extravagant estimates of their population: did they insist on no precaution to be inserted in the constitution, against extravagant counts of it, when census time arrived? Dreamers all! They were rocked in the cradle of a false security! No security was given by the North, no security was demanded by the South, except the worthless and childish security that direct taxes were to be apportioned by the measure that ascertained the number of representatives, so that if a false count of population gave to the North section a great preponderance of political power, it would be liable to pay a proportional share of direct taxes. But if the government ceased to be supported by direct taxes principally, or supported at all by them, the security vanished, and the slave-traders and smugglers, the manufacturers and tonnage-duty men, could count as they liked. -Such a statesman as Ellsworth or Wilson, or the gallant Hamilton, must have smiled at the earnestness with which the lord of Gunston Hall insisted on the possession of a shadow.

The fifty-fourth number of the "Federalist," from the pen of the acute and logical Madison, thus commends and explains this part of the constitution:

"In one respect the establishment of a common measure of representation and taxation will have a salutary effect. As the accuracy of the census to be obtained by Congress will necessarily depend, in a considerable degree, on the disposition, if not co-

operation of the states, it is of great importance that the states feel as little bias as possible to swell or reduce the amount of their numbers. Were the share of representation alone to be governed by this rule, they would have an interest in exaggerating their inhabitants. Were the rule to decide the share of taxation alone, a contrary temptation would prevail. By extending the rule to both objects the state will have opposite interests, which will control and balance each other, and produce the required impartiality." This exquisite argument, obtained from the imagination of a great statesman and constitutional reasoner, was answered in the first Congress. So much for the forecast of the logician in practical statesmanship! Operating through the phalanx North section conferred on itself eighty millions of dollars, the discounts of a national bank, and advantages in the fields of industrial enterprise more valuable still. The North thus enriched, and the South thus impoverished, the former could well have afforded at each decennial census, by false counts of population, to purchase a further lease of Federal power. When it came to pass that the government subsisted on the products of the custom-house and of the sale of public lands, it should have occasioned no surprise to Madison certainly that the phalanx continued to hold the reins of government.

The written constitution is the production of speculation and ingenuity, and will contain assuredly some uncovered point, some vital imperfection, which will cause its design to be defeated. It would be difficult to find of this truth a more instructive illustration than the sectional equilibrium. It is matter of pure conjecture what result would have ensued if the projected equipoise had taken place. Assuredly there would have been no collisions of the sections, but when not on sectional ground the government would have been one of the numerical majority, and ex-

posed to all the objections which attach to creations of that character. It must not be forgotten that an equipoise is only a negative, a self-protecting force' and cannot produce a positive result. In a subsequent chapter this subject will be touched again, and examples afforded.

CHAPTER XI.



THIS chapter of our book will contain a view of self-government in America even less encouraging to imitators and admirers than the preceding one ; and will excite surprise, and perhaps indignation, in the breast of the reader. The protective system, in its excesses, presents a picture of rapine and extortion—the robber taking the property of a victim he has overpowered ; but now we have before us an instance of plighted faith dishonoured continuously, that an equal partner in the enterprise of government might be reduced to a tributary. The policy of the phalanx, in the struggle for congressional dominion, was twofold : to encourage enterprise at the North by all the rewards and stimulants of industry, but to suffer Southern capital and labour to languish under their old burdens, but with a new burden imposed upon them. It was an excellent opportunity, which was not lost, to teach the baron of the South, surrounded by his swarthy dependents, what it is for a people rich in the productions of the earth to be subjected to the legislative authority of another, and to dispel the day-dreams which flickered around him. By this double system—of action and refusal to act—the Northern man would become wealthy and powerful, whilst all

the gifts of a bountiful Creator would be contravened and annulled to the Southern man by the wasting hand of bad government. This is the way in which the majority power, with its asserted divine right to govern society, discharges its political obligations. Let emperors and kings survey the work of their fellow sovereign, and be instructed in the high philosophy of the Republic, and let the people who are protected by their sceptres be satisfied with their lot. Let them see by what crooked paths democratic ambition, guided and intensified by avarice, attains its goal.

If the reader, seeking to penetrate to the marrow of the subject, would have set before him very vividly another example of the working of this erroneous principle of government, he is referred to the seventh chapter of Lecky's "History of England in the Eighteenth Century," between pages 225 and 246, Appleton's American edition. He will see there that the power and vigilance of the paternal Imperial Parliament, which presumed to call itself a government for Ireland—although an Irish parliament then existed—were employed by the merchants and manufacturers of England to destroy utterly corresponding rival interests in Ireland, sustaining classes, cities, and provinces, that they might monopolize the home market, although that heartless statesmanship carried in its dejected and squalid train depopulation, desolation, pestilence, and famine. It may be received as a truth, established by experience, that, whether in the wide area of America or Europe, if classes, or combinations of them, be armed with representative power, this pernicious principle in politics will produce the same blasting results. In the American Congress it was a Northern phalanx, in the Imperial Parliament it was an English phalanx which played the greedy tyrant; and if a constitution were conceded to the demands of the Nihilist, there would be created soon

a Russian phalanx to plunder or destroy minorities. To be a political minority under that kind of government is to be divested of the rights of human nature, and be relegated to a condition of slavery; for when the profits of a man's capital and labour are handed over to another by the silent operation of unjust law, he is a slave, although the purest blood of Caucasus pours through his veins.

The revocation of the Edict of Nantes threw fifty thousand French Protestants on the shores of England. They were received as the victims of oppression always have been in that hospitable country. But the intolerance of avarice was as cruel as the bigotry of religion, and in its effects enriched and strengthened foreign nations as greatly. The historian of the Eighteenth Century thus continues his sad but instructive narrative, that the people as well as their rulers may be informed as to the action of this short-sighted principle of government :

"The result was that a steady tide of emigration set in, carrying away all those classes who were most essential to the development of the nation. The landlords found the attractions of London and Bath irresistible. The manufacturers, and the large class of energetic labourers who lived upon manufacturing industry, were scattered far and wide. Some of them passed to England and Scotland. Great numbers found a home in Virginia and Pennsylvania, and they were the founders of the linen manufacture in New England. Others, again, went to strengthen the enemies of England. Louis XIV. was in general bitterly intolerant to Protestants, but he warmly welcomed, protected, and encouraged in their worship Protestant manufacturers from Ireland who brought their industry to Rouen and other cities of France. Many others took refuge in the Protestant states of Germany, while Catholic manufacturers settled in the northern provinces of Spain, and laid the foundation of an industry

which was believed to be very detrimental to England." ¹

When peace returned and the sea was cleared of British cruisers, we have not forgotten that Southern agriculture craved but a single boon of the political power—to be protected from the exclusions and exactions of the commercial codes of foreign states. We remember that planters and farmers, restive at being poor in the midst of bursting granaries, had tried the effect of independent state action, but that it had increased the evils from which they suffered. A great Federal party arose, promising a new era for agriculture, if jurisdiction over the foreign trade were given to Congress—the common, and, as was asserted, the impartial agent of the states. After a struggle, the like of which no other nation can parallel, the work as projected by Hamilton and recommended by Washington was accomplished. A Federal autocrat was created by the great Reform party, every high jurisdiction of government having been bestowed on him. Not Olympian Jupiter in that regard was more potential. That compact with the Federal power, originating and accompanying the constitution, was audaciously and wickedly violated by the new Congress sitting at Washington's feet, and basking in his approving smiles.

James Monroe, a deputy from Virginia to the Congress of the Confederation, a good man of his class and a rising politician, was one of the public men to whom the renovated Union fell heir. In compliance with instructions sent by the delegating power, the Legislature of Virginia, he brought in a resolution in respect to the depressed foreign trade of the country, a melancholy note ever sounded in the ear of the government. It was referred to a committee, who, in May, 1785, two years before the commercial jurisdic-

¹ Vol. ii. p. 283.

tion was transferred to Congress, reported upon it in the words following, to wit: "We behold the several states taking separate measures in pursuit of their particular interests, in opposition to the regulations of foreign powers, to defeat the regulations of each other. There is no plan of policy into which they can separately enter which they will not be separately interested to defeat, and of course all their measures must prove vain and abortive. But, if they act as a nation, the prospect is more favourable to them. The particular interest of each will then be brought forward and receive a Federal support." The report was graciously received by Congress, and placed among the archives of the government, where it now is, to bear witness to the promise made to Virginia and to the other states, that Congress, if intrusted with the coveted power to regulate their foreign commerce, would protect the particular interest of each state against the hostile custom-house duties of Europe and other parts of the globe.

What says the Federalist on that subject, as it expounded the meaning of the constitution and the compromises on which it was founded? Its eleventh number holds this encouraging but deceptive language: "By prohibitory regulations extending at the same time throughout the states, we may oblige foreign countries to bid against each other for the privileges of our market. The assertion will not appear chimerical to those who are able to appreciate the importance to any manufacturing nation of the markets of three millions of people increasing in rapid progression; for the most part exclusively addicted to agriculture, and likely, from local circumstances, to remain in this disposition. Suppose, for instance, we had a government in America capable of excluding Great Britain from all our ports; what would be the probable operation of this step upon her politics? Would it not enable us to negotiate, with the fairest prospects of

success, for commercial privileges of the most valuable and extensive kind in the dominions of that kingdom?"

This eleventh number, renewing the pledges of the Congress of the Confederation as equally binding on the proposed government, and making them an inducement to its adoption, was from Hamilton's pen. He holds out the belief that agriculture and commerce, "the two breasts of the state," were to continue under the new government to be the pursuits of America, and that an energetic policy of commercial retaliation would be adopted to insure their prosperity. But, as the head man of Washington's administration, he forgot his engagements to agriculture and commerce, and produced a fraudulent heir to the state. Acting in his proper sphere, as a gentleman and a lawyer, Hamilton was a mirror of knighthood, but the corrupt and grasping politics of the phalanx, to which he was allied, and the crooked ways of the Federal party generally, induced him to act an uncandid part in this case, and out of tone with his noble and high-strung nature.

Washington was a planter, whose extensive interests were spread into many counties and sections of the state. He was moved by a love of gain, as well as by patriotism, to restore the values of agriculture. On this subject his correspondence is voluminous, frequent, and interesting, and exhibits the strong desire of his class to have government armed with a power to retaliate on the injurious trade regulations of foreign states. To La Fayette, the confidant of his opinions, hopes, and apprehensions, he writes: "Whenever we shall have an efficient government established, that government will surely impose retaliatory restrictions upon the trade of Great Britain. At present, or under our existing form of confederation, it would be idle to think of making commercial retaliations upon our part. One state passes a prohibitory law respecting some article, another state opens wide the avenue for

its admission. It was in vain to hope for a remedy for these and innumerable other evils until a general government is adopted." As planter Washington argued, so argued every other planter and farmer in the Union. There was a diapason of voices that went up from every neighbourhood in favour of giving to Congress in some form, and under some conditions, the power of commercial retaliation ; and, when men saw those powers placed in the new constitution, it went further to reconcile them to it than all other causes, so strong is the desire of gain in an unprosperous people.

The three productions of the South, upon which the trade laws of Europe acted with peculiar severity, were the tobacco of Virginia and Maryland, and the indigo and rice of the Carolinas and Georgia ; for the cotton plant had not yet been introduced. These important interests had been left by the phalanx to languish under the new government, as they had done under the inefficient Confederation. No treaty, no regulation, was made for their advantage by the dominant faction in Congress. In the family of states those commonwealths were treated as Hagar in the family of Abraham. Neglect and oppression was the only portion of South section, whilst arrogant North section monopolized all the advantages of the new government. It was the story of Goneril and Regan repeated. The Yankee had come with his tenders of a political marriage ; the South was beguiled by the treasonous offer, and tasted the fair pernicious fruit, and the gates of Paradise were closed against her. Monarchs destroy individuals who have offended them, but republics devastate provinces and sections by neglect, by oppression, or by the sword.

As soon as the new system was in working order, Madison brought the subject of commercial retaliation to the attention of Congress in these impressive words :

“He contended, as agriculture was the great staple of the United States, it was the duty of the government to foster and protect it by every power with which it was armed by the constitution. Retaliation was the only means by which that object could be accomplished, and that it was the main inducement that led to Federal reform. We shall soon be in a condition, we are now in a condition,” he said, “to wage a commercial warfare with Great Britain. The produce of this country is more necessary to that country than that of other countries is necessary to America. If we were disposed to hazard the experiment of interdicting the intercourse between us and the powers not in alliance, we should have overtures of the most advantageous kind tendered by those nations. If we have the disposition, we have abundantly the power to vindicate our cause.”

So spoke Baldwin and other members of Congress from the South. In a brief special message the somnolent executive acknowledged this obligation to be imposed on the government. In 1793 Madison took a yet more decided step, and brought into Congress a bill “for the regulation of our foreign commerce.” The phalanx mustered its forces and defeated the bill, and we hear no more of that historical subject until a period not long before the Civil War, when Honourable T. F. Bowie, of Maryland, moved in Congress on the subject of the tobacco interest. But the phalanx, grown stronger, collected its clans again, and got the disagreeable subject out of the national legislature by having it referred to the diplomatic action of the government, which had been charged with it under the Articles of Confederation—the period when Virginia instructed James Monroe to bring the subject to the attention of Congress. The fact is, instead of the promised free trade in tobacco, the foreign duties had been increased in severity, the Congress with its new commercial jurisdiction, the President, and the

nation, sitting inactive spectators of the oppression. This is the way in which a minority interest is treated in a republic.

Tobacco is truly a historical subject in the United States. It was a strong co-operative, if not the principal force, in making the Revolution of 1776, it was the cause that set on foot the Constitutional Revolution in 1787, and it should receive consideration at the hands of all writers on American history, for its wrongs are still unredressed. This appears by a report on the commercial relations of the United States with all nations, addressed to the thirty-fourth Congress. The duty exacted on the importation of American tobacco by Russia was—still is—six roubles, or four dollars and fifty cents per one hundred and ten pounds ; by Austria, twelve dollars and twelve-and-a-half cents per one hundred and ten pounds, but allowed to be imported only with the permission of the government. Besides the import duty, an extra due for the grant of a license must be paid, amounting to twenty-seven cents per pound for unmanufactured, and one dollar and twelve-and-a-half cents per pound for manufactured. The Zollverein exacted five dollars and fifty-two cents per one hundred and ten pounds. In Sardinia, tobacco was a government monopoly. In the two Sicilies it was prohibited. In France tobacco was prohibited, or was a government monopoly. In Spain it was prohibited. The British government exacted on the importation of tobacco unmanufactured seventy-two cents per pound, and five cents additional. On manufactured and cigars two dollars and sixteen cents per pound, and five cents additional. On snuff, one dollar and forty-four cents per pound, and five cents additional.

The power to regulate foreign commerce, we see, has been an unemployed weapon in the hands of Congress—a sword rusting in the scabbard. Besides the testimony of the Federal statutes in support of

this statement, I cite an extract from Benton's forty-seventh chapter and first volume : "The constitution of the United States gives to Congress the power to regulate commerce with foreign nations. The power has never yet been executed in the sense intended by the constitution : for the commercial treaties made by the President and Senate are not the legislative regulations intended by that grant of power ; nor are the tariff laws, whether for revenge or protection, any more so. They all miss the object and the mode of operating intended by that grant, the true nature of which was explained in the early life of the new Federal government by those most competent to do it—Mr. Jefferson, Mr. Madison, Mr. William Smith, of South Carolina ; and in the form most considerate and responsible. So that in the speeches and writings of these three early members of our government (not to speak of many other able men in the House of Representatives), we have the authentic exposition of the meaning of the clause in question, and its intended mode of operation. So that the power given in the clause to regulate commerce with foreign nations has never yet been exercised by Congress : a neglect or omission the more remarkable, as besides the plain and obvious fairness and benefit of the regulation intended, the power conferred by that clause was the potential and moving cause of forming the present constitution and creating the present union."

We draw yet nearer to the Federal number to witness another result growing out of the neglect of Southern agriculture by the Federal government, controlled by a sectional majority. We turn our steps towards Virginia, the first mover for a new constitution to prop the tottering edifice of her industry and power. The foreign trade of that state, after a while, was taken from her, and distributed among Northern seaports. The tendency to that result, under the Confederation, had been pointed out by Madison

in his letter to Jefferson. After it had been confirmed into a trade law under the new government, a total disruption of all business ensued, occasioned by the "thirty or forty per cent. tribute" paid to the Northern merchant,—a new burden added to the old burden of the foreign tariffs and the weight of the protective system. Indeed the new burdens, and the old burden, brought the commonwealth prostrate on the earth. I give the statistics of misfortune as I find them in the debates and proceedings of the Constitutional Convention of Virginia of 1829-30. Towns once the seat of a flourishing trade fell into ruin, real estate sank in value, and slave labour became worthless. Lands which in 1817 had been valued at two hundred and six millions of dollars, by 1830 had declined to half that sum, and city property and slaves in as great proportion. Charles Fenton Mercer, representative from Loudoun county, complained that: "Commerce, the inconstant handmaid of Fortune, had turned her prow from the ports of Virginia to the favoured harbour of New York."

But the most distressing, as well as the most injurious consequence, was the depopulation of the commonwealth and the destruction of the tenant system founded on the cultivation of tobacco. The grass regions of the commonwealth, from tobacco fields were converted into pasturelands. This occasioned a consolidation of the tenant farms, and their dwellings were devoted to inevitable decay. Throughout Eastern Virginia the vestiges of their homes still are visible—a dismantled building, a falling chimney, a decayed orchard, a neglected graveyard, or "a rose to tell where a garden had been." In language, which I copy, Hume describes a similar calamity which befell the English ancestors of the Virginians: "Pasturage was found more profitable than tillage; whole estates were laid waste by enclosures; the tenants, regarded as a useless burden, were expelled from their habitations; even cottagers,

deprived of the common on which they formerly fed their cattle, were reduced to misery; and a decay of the people, as well as a diminution of the former plenty, was remarked in the kingdom." In Virginia, those sections suited only to the plough and the seedsman were left to desolation. Of tide-water Virginia, off from the streams, Mr. Mercer presented to the convention a truly melancholy picture: "Except on the banks of the rivers, the march of desolation saddens this once beautiful country. The cheerful notes of population have ceased, and the wolf and wild deer, no longer scared from their ancient haunts, have descended from the mountains on the plains. There was a time when the sun, in his course, shone on no land so fair."

To the description of lowland Virginia, just given, I add one from the graphic and brilliant pen of John Randolph, of Roanoke, but of an earlier date. At Cawson, the residence of Colonel Bland, the rivers James and Appomattox, as they mingle their congenial waters, stretch into a beautiful prospect. As he stands on the promontory, where the mansion was situated, the spectator embraces in one view Bermuda Hundred, with its harbour and ships, City Point, and other places of interest. In 1814 Randolph writes to a friend: "A few days ago I returned from a visit to my birthplace, the seat of my ancestors on one side—the spot on which my dear and honoured mother was given in marriage, and where I was ushered in this world of woe. The sight of the broad waters seemed to renovate me. I was tossed in a boat during a row of three miles across James River, and sprinkled with the spray that dashed over her. The days of my boyhood seemed to be renewed; but at the end of my journey I found desolation and stillness, as of death—the fires of hospitality long since quenched; the parish church, associated with my earliest and tenderest recollections, tumbling in pieces, not more from natural decay than sacrilegious violence. What a

spectacle does our lower country present ! Deserted and dismantled country houses, once the seat of cheerfulness and plenty ; and the temples of the Most High ruinous and desolate, frowning in portentous silence upon the land. The very mansions of the dead have not escaped violation. Shattered fragments of armorial bearings, and epitaphs on scattered stone, attest the piety and vanity of the past, and the brutality of the present age."

In nine years the counties of Loudoun and Fairfax, under the government of the phalanx, had diminished in population nine thousand. Riots, as in England, did not break the public peace, for a solution of the social problem was offered in the occupation of a vacant and fertile country, accessible from Virginia. Tides of population flowed out of a region cursed by Federalism into Kentucky, Tennessee, and Missouri, and the emigrants carried with them their families, their herds, and their slaves. A branch of the living current crossed the Ohio, as if determined still to be in Virginia, and sought to introduce in their new homes their accustomed labour system. Thus by a government, which Washington devised and inaugurated to prevent the people of the states from returning to the British connexion, the North section was given happiness, abundance, power, whilst from that unequal and ungenerous hand South section received crucifixion and a crown of thorns.

With this dismal picture set before our eyes of a flourishing commonwealth destroyed by the oppressions of government, it is with indignation that we peruse this extract from an American quarterly review. It is by such thoughtless and uninformed writers that erroneous opinions are propagated abroad as to the value of the political institutions of the United States.

The review says : " Were Ireland a state of this Union, does any intelligent, candid man imagine she

would remain many years as she is? No. Her mines would be worked; her hill-sides would be ablaze with the furnace and the foundry; her banks, instead of being a substitute for the old stocking, would receive and give life to industrial enterprise; her fisheries would become a source of wealth, and produce a body of hardy seamen; the white sails of her commerce would spread over every sea, the visions of her orators would be partially realized; a new spirit would be abroad and make new the face of the land."

It is a remarkable fact in the history of renovated Federalism, that the agricultural class of the East and North did not unite with the planting class of the South to have a retaliatory commercial legislation adopted by Congress. The explanation may be obtained from the correspondence of General Washington. The farming class at the North had ceased to be interested in that legislative policy. The bond of a conjoined interest was broken. The disturbance to industry produced in Europe by the revolution in France, had caused all ports to open spontaneously to the grain trade of America. The year 1790 had given to the farmers of Pennsylvania and New York a bountiful wheat harvest, and the demand for it abroad was great. Whilst this cause produced prosperity in that agricultural section, the horn of abundance was poured over the Eastern states by the protective policy recommended by General Washington, and devised by Secretary Hamilton.¹ That year the President had made a progress through New England, that his eyes might be feasted with the smiling scenes which he had created. A letter from the President, to Mrs. Catherine M'Caulay Graham, thus paints the attractive picture: "The increase of commerce is visible in every part, and the number of manufactures intro-

¹ See "Hamilton's Report on Manufactures." It was for a long time the text-book of the protection tariff men, the armoury from which they derived their arguments for the political strife.

duced in one year is astonishing. I have lately made a tour through the Eastern states. I found the country, in a great degree, recovered from the ravages of war; the towns flourishing, and the people delighted with a government instituted by them and for their good."

The President does not expose to his intelligent correspondent, offering a tribute of admiration to a hero, the dolorous Southern side of the picture. He did not inform that lady that the people of the entire South section, and his own Virginia chiefly, were in a mood to draw the sword at the oppressions of his government, and that brave Harry Lee was among them, the warrior son of the "Lowland beauty" he had loved so well.

After surveying the prospect of Northern felicity, as drawn by Washington, it will instruct us in the nature of his character to be informed that yet he thoroughly understood those Eastern men, and the methods which they were employing under his eyes on the Federal theatre to attain their objects. He was conscious, whilst the work was progressing, that they were making a spoil of South section, yet he would not comprehend that the highest purpose of a presidential veto was to protect minorities from such plundering combinations as the phalanx openly had formed. To one of his correspondents he blamed the Southern minority for not preserving an ineffectual unity of action against that preponderant vote. But it is well to let a President of the United States speak for himself:

"Was it not always believed that there were some points which peculiarly interest the Eastern states? Did any one, who reads human nature, and more especially the character of the Eastern people, conceive that they would not pursue their interests steadily by a combination of their forces? Are there not other points which equally concern the Southern

states? If these states are less tenacious of their interests, or, if while the Eastern move in solid phalanx to effect their views, the Southern are always divided, which of the two are the most to be blamed?"

The phalanx was composed not of the Eastern votes alone, but of those votes combined with the Northern votes in Congress. These united bodies, moving in close column, or, as Washington calls it, "solid phalanx," carried by their majority every measure favourable to the North and East, and defeated every measure favourable to South section. The annals of Congress exhibit this fact. Whilst, as president of the convention, and deputy from Virginia, he watched the silent growth of that colossal power, Washington was well apprised, it appears, from the character of the Eastern and Northern people, of their legislative affinities, and that if the government were placed under their control they would employ it for their joint aggrandizement. Others there were who, lulled by dreams and hopes, believed that ultimately, by the action of events, the South would become the greater section in the Union; but not Washington, with his strong, practical understanding. He at least was no dreamer. The Republic is a dangerous power for any nation to experiment with, for no organical structure can control the action of its government. When created, a force is originated which resembles the terrible agents of nature,—flood, conflagration, storm,—and it must run its desolating course. There is but one solution of Washington's conduct. He sacrificed Virginia, as well as every other state of South section, to a Northern majority, in a powerful government, to prevent counter-revolution. He was not dazzled by the common objects of ambition; but the revolution was not a common object of ambition. It represented all that he prized most in life—his influence and fame; and

in none of the great men of history was blinding self-love more powerfully developed than in George Washington.

CHAPTER XII.



INDIGO was planted in the two Carolinas and Georgia about the year 1740. From the success which attended its cultivation it attracted the attention of the British manufacturer, and received the patronage of the British government. So flourishing, under that fostering policy, had the indigo interest become, that, in the thirty-five years which preceded the American revolution, the annual export of that commodity, to the home dominions of the Crown, amounted to more than one million pounds. After that event a period of adversity set in, and, by the year 1800, the export of indigo had been reduced to four hundred thousand pounds per annum; by 1814, to forty thousand pounds per annum; at a date still later, the export amounted to eight thousand pounds per annum. The causes of the prosperity and adversity, which in turn visited the cultivation of indigo in the United States, must confirm our belief in the tendency of representative government to foster the strong, but to allow the weak to dwindle, to sicken, and to perish.

In the reign of George II. a law was enacted awarding a bounty, or premium, of sixteen pence sterling, to be paid out of the British treasury, for every pound of indigo imported out of the plantations in North America. It recited that a regular, ample, and certain supply of indigo was indispensable to the success of British manufactures, then dependent on the foreign supply of that article; and that it was the dictate of a wise policy to encourage the production of indigo

at home. When monarchy was abolished, and those colonies became provinces of a Federal Republic, the bounty was paid no longer, and indigo was left to scramble, in Congress, with stronger interests for the assistance of the political authority. In tracing the history of this commodity we pass to the year 1829, memorable for the high protective tariff with which the phalanx, become more exorbitant and more powerful, had afflicted South section, still the region of exports and imports, as Ellsworth had described it. It had obeyed the law of all monopolies, becoming, as time progressed, more excessive in its exactions and spoliations. Benton, at this time a senator from Missouri, was a vigorous actor and an intelligent observer in the Congress of 1828-29. He has given the history of the origin, progress, and consummation of that measure of plunder legislation, and I transcribe it here as the most instructive part of his "Thirty Years' View in the Senate":

"The Tariff Act of 1829 marks an era in our legislation. It was the work of politicians and manufacturers; and was commenced for the benefit of the woollen interest, and upon a Bill chiefly designed to favour that branch of manufacturing industry. But, like all other Bills of the kind, it required help from other interests to get itself along, and that help could only be obtained by admitting other interests into the benefit of the Bill. And so, what was begun as a special benefit, intended for the advantage of a particular interest, became general, and ended with including all manufacturing interests, or, at least, so many as were necessary to make up the strength which was required to carry it through Congress."

The senator watched the Bill as it threw out its arms and tentacles, gathering allies and helpers in its wide and strong embrace. In this way the selfish principle in government acted in 1829 in the American Congress. Benton represented slave-holding Mis-

souri, geographically a part of the West, but politically classed with the South, and he was a native of North Carolina. His political and moral connections, as well as the magnanimity of a great mind, induced him to propose to amend the Bill with a duty of twenty-five cents per pound on imported indigo, with a progressive increase, at the rate of twenty-five cents per pound per annum, until the whole duty amounted to one dollar per pound. The object of the amendment was two-fold: first, to place the American system beyond the reach of its enemies, by procuring a home supply of an article indispensable to its existence; and second, to benefit South section by reviving the cultivation of one of its ancient and valuable staples. But the sectional combination, or the phalanx, as it was better called in the first Congress, did not require the help of the indigo interest, and refused to extend the partnership, as Senator Benton had proposed. But, when understood, the interest of the phalanx was opposed to the proposed duty, and demanded cheap indigo from abroad with which to tincture and stain their fabrics. So they refused again to recognize the agriculture of South section as admissible into what they called an "American system." Whip in hand, the manufacturers stood in the lobby of Congress, watching their attorneys on the floors of Congress, and directing their action. To keep up the appearance of justice, but for no other purpose, a duty of five cents per pound annually for ten years, but to remain at fifty cents, was proposed as a substitute for Benton's amendment, which would have been twenty-five per cent. on the cost of the article, to be obtained after a progression of ten years, whilst all other duties in the Bill were from four to five times that amount, and to take effect immediately. Benton thus speaks of the transaction: "A duty so contemptible, so out of proportion to the other provisions of the Bill, and doled out in such miserable

drops, was a mockery and an insult, and was so received by the Southern members. It increased the odiousness of the Bill by showing that the Southern section of the Union was only included in the American system for its burdens, and not for its benefits."

William B. Giles, a member of the first Congress and a governor of Virginia, was a first-rate figure in the politics of the Union, and knew the stream of Federal politics as it flowed from its remotest fountains. He had contended with the phalanx when first formed, and was a stalwart champion worthy to battle for free trade by the side of Madison. Watkins Leigh, a great Richmond lawyer, said Giles was the only man of his day who, in conversational argument, could contend with Chief Justice Marshall. This experienced statesman and able logician gives the origin of the movement which culminated in the Tariff Bill of which Benton has spoken. That Tariff is historical in the politics of the Union. It produced the Nullification ordinance, and was called by its adversaries "The Bill of Abominations," and is so known in American history. If it had not been repealed, it would have produced the rupture between the sections which was postponed until 1861. Governor Giles was a member of the Constitutional Convention of Virginia in 1830, when he made the speech from which this extract is obtained:¹

"He called the attention of the convention to an example forming an awful contrast to the one presented by the gentleman. It was furnished by the Federal government. An excessive tax, as he conceived, had been imposed by that government in direct violation of moral principles, and the plainest provisions of our written constitution. It originated in combinations of particular sections of country to tax other sections. These combinations were effected

¹ "Debates and proceedings of the Convention of 1829-30."

by invitations, given by certain political fanatics to other fanatics, to meet in convention in Harrisburg during the recess of Congress; excluding from these invitations all the sections of country intended to be made tributary. Virginia was not honoured with an invitation, nor any state south or south-west of Virginia. This convention, thus composed, unblushingly met at Harrisburg in open day, organized themselves into a convention with all the honours and formalities awarded to this convention, and there laid the Tariff Act which, subsequently, was sanctioned by Congress. This Act was passed in direct violation of every principle of taxation heretofore held sacred, and was addressed to the worst passions of the human heart. Such are the effects of the unprincipled measures recommended by the fanatical convention of Harrisburg, which, after usurping all the powers of an authorized convention, kept a regular journal of their proceedings, and, after their adjournment, officially forwarded him a copy thereof."

We have had explained, by two leading men in the Union, the working of the Republic in 1829 as it affected the two sections which composed the Union, and how it laid the hand of poverty and distress upon South section. We will now compare it with the treatment which New England, a minority combined in the potent phalanx, received for one of its distinctive interests. The New England fisheries had been encouraged by bounties paid out of the King's treasury, as the indigo plantations had been, and they were not neglected by the Republic of the United States. Congress granted five cents a barrel on pickled fish, and five cents a quintal on dried fish, exported from the United States, in lieu of the drawback on the duties imposed on the importation of the salt used in curing such fish. The Act of 1790 increases the bounty, in lieu of the drawback, ten cents a barrel on pickled fish, and ten cents a quintal on dried fish. The Act of

1792 repeals the bounty in lieu of the drawback on dried fish, and in lieu of that, and as a compensation and equivalent therefor, authorizes an allowance to be paid to vessels in the cod fishery (dried fish) at the rate of \$1.50 per ton on vessels from twenty to thirty tons, with a limitation of \$170.00 for the highest allowance to any vessel; and a supplementary Act of the same year adds twenty to each head of these allowances. An Act of 1797 increases the bounty on pickled fish to twenty-two cents a barrel, and adds thirty and a third per cent to the allowance in favour of the cod-fishing vessels. The Act of 1799 increases the bounty on pickled fish to thirty cents a barrel; the Act of 1800 continues all previous Acts, bounties, and allowances for ten years. In 1807, when Jefferson was president, a law was enacted by Congress which repealed all Acts for paying bounties on the exportation of pickled fish and making allowances for fishing vessels. But in 1813, when facile Madison was on the presidential throne, the phalanx rallied its forces and again entrenched itself in the government. In that year an Act was passed which gave a bounty of twenty cents a barrel on pickled fish exported, and allowed to the cod-fishing vessels at the rate of \$2.40 for vessels between twenty and thirty tons, \$4.00 a ton for vessels above thirty tons, with a limitation of \$270.00 for the highest allowance. The Act of 1816 continued the Act of 1813, which otherwise would have expired with the war. The Act of 1819 increases the allowance in the cod-fishery to \$3.50 per ton on vessels from five to thirty tons, and \$4.50 per ton on vessels above thirty tons, with a limitation \$360.00 for the maximum allowance. By 1830 the aggregate of the fishing bounties and allowances had amounted to thirty-five million dollars drawn out of the Federal Treasury. These facts speak for themselves, and speak loudly, when taken in connection with the cold neglect with which the indigo interest and the tobacco interest had

been treated by the Federal Congress for which Hamilton and Washington had made such profuse promises.¹

In the full and accurate learning which Benton brought to the examination of the action of the Republic, during his extended senatorial term, he was lead to compare the result upon the sections produced by the legislation of the Republic of America, and that of the Monarchy of England, and this is his conclusion :

"In the colonial state, the Southern were the rich part of the colonies, and expected to do well in a state of independence. They held the exports, and felt sure of their prosperity ; not so the North, where the resources were few, and who expected privation from the loss of British favour. But in the first half century after independence this expectation was reversed. The wealth of the North was enormously aggrandized, and that of the South had declined. Northern towns had become great cities ; Southern cities had decayed, or become stationary ; and Charleston, the principal port of the South, was less considerable than before the revolution. The North became the money-lender of the South, and Southern citizens made pilgrimages to Northern cities to raise money on the hypothecation of their patrimonial estates. This was in the face of a Southern export since the revolution of \$800,000,000, and equal to the product of the Mexican mines since the days of Cortes, and twice or thrice the amount of their product in the same fifty years. The Southern states attributed the result to the action of the government : its double action of levying the revenues upon the industry of one section of the Union, and expending them on another, and especially to the protective tariffs. To some degree the attribution was just, but not in the degree assumed ; which is evi-

¹ See the "Federalist" and Washington's letter to La Fayette before quoted.

dent from the fact that the protective system had only been in force for a short time. *Other causes must have had that effect*; but for the present we look to the protective system; and without admitting it to have done all the mischief of which the South complained, it had done enough to cause it to be condemned by every friend to equal justice among the states—by every friend of the harmony and stability of the Union—by all who detested sectional legislation—by every enemy to the mischievous combination of partisan politics with national legislation.”

Beyond question Benton is in error when he assigns 1816 as the beginning of the protective system in the United States. My readers know it was begun in 1789, and had its headsprings in Washington’s cabinet, if the men who made the law and officiated at its baptism are to be presumed to have understood what a tariff bill meant and the design intended to be accomplished by it. Henry Clay of Kentucky, the great champion of protection, always traced the protective policy to that source, claiming Washington for its first patron, and he did so in a speech made in the senate which Benton heard, and has quoted in his “Thirty Years’ View.” By 1816 the protective system had swelled into an overgrown monopoly, had driven Calhoun into the ranks of its opponents, and perhaps Benton, at that time not in politics, but a growing lawyer at the St. Louis bar. But the senator is right when he conjectures that “other causes” had supervened and allied themselves with the protective system to produce the calamities to the South which he has set before us in so vivid a picture. With those other causes, not considered by the learned Benton, my reader somewhat fully, if not tediously, has been made acquainted in the refusal of the phalanx to lift from Southern agriculture the crushing weights put upon it by the revengeful tariff of Great Britain and the injurious co-operating tariffs of the states of the continent.

The existence of that other cause was known to Benton, as the presence of an undiscovered astral body is detected, though not visible to the telescope of the astronomer. In searching for the forces which had disconcerted the projected equilibrium of sections, this writer, before the Civil War, had ascertained and published the causes in the "Lost Principle of the Federal Government." But I cannot take leave of the Bill of Abominations until it has pointed the moral of this book. It was produced by an adulterous connection between the manufacturer and the politician. Giles and Benton saw its gendering, its embryo, its birth, as they beheld the monster after it had attained its maturity, and the voters of America had as little to do with it as they had had with the enactment of the British navigation laws. We have stood at the sources of American liberty, we have followed the stream along its devious course, and have seen the king of floods throw himself into the ocean of despotic power.

Tobacco was too important an entity in the colonies, and the states into which they declined, not to receive further attention at our hands. On the tobacco plant the civilization of Virginia was founded. Its cultivation had spread into the province of Kentucky, whilst Virginia, with the rifle in one hand and the implements of husbandry in the other, was preparing to cross the Ohio and assert the claims of civilized society against the occupancy of the red man. Tobacco formed the only, or at least the principal article of commerce which Virginia sent abroad. The subdivision of her soil into minute allotments had been made with reference to its cultivation, for whilst her territory, to a considerable extent, belonged to proprietors who had purchased from the patentees of the Crown, it was in the hold and occupation of a numerous tenantry, who employed the labour of slaves. Thus in the wilderness had arisen the mediæval type of society,

which both philosophy and experience teach is the strongest, and that which most perfectly reconciles and combines the adverse claims of capital and labour, and if upheld by the political power affords a lasting foundation for national life.

Along the coast of Africa, which fronts the West, markets of supply invited the Puritan slave-dealer, who had supplanted the British merchant in the profitable but dishonourable traffic. In any market town in the colony a hogshead of tobacco could be exchanged for a Congo or Guinea negro. Thus the slave trade fructified the plantations of Virginia and Maryland, whilst it enhanced the wealth of New England. A monopoly of the tobacco export trade the Navigation Act secured to the British merchant, by whom, after the domestic wants of the kingdom were satisfied, the demand of the continental states was supplied with that commodity, as far as it was produced in the North American colonies. As a compensation for the monopoly, tobacco was admitted duty free into British ports. Subject to these conditions, the tobacco culture widened as the settlements of the Anglo-Virginian were enlarged, and rewarded the industry and capital which it employed.

The civilization of that British plantation owed a further debt to tobacco, for it provided the colonists with a convenient local currency. It was the money of Virginia, excepting in the retail trade, which was furnished with coin struck in London, or which had worked into circulation from the Spanish Main. By the enactments of colonial statutes, warehouses, at convenient places, were constructed in which tobacco was deposited and inspected, and the certificates of the warehouseman performed the offices of a paper currency, but were liable to fluctuate in value with the changes in the tobacco market. Thus, in that rudimentary civilization, had been introduced the tobacco bank of deposit, not differing, in principle, from the

Bank of Amsterdam, of which Lord Macaulay in his "History of England," and Adam Smith in his "Wealth of Nations," have given interesting accounts. One of the false promises of the revolution to the planter class was that, with the establishment of an independent government, the tobacco monopoly would be abolished, and all markets opened to it, introducing, instead of monopoly, the lucrative principle of competition. The unlesioned statesmen of the colonies—the lawyers, the surveyors, the fox hunters, the planters,—blind guides of an erring people, did not understand, until experience unsealed their eyes, that foreign markets were barred to tobacco by state policies which no diplomacy could change. The greatest attainable advantages were then enjoyed in unrestricted intercourse with the ports of the empire which the revolution closed, or so embarrassed by conditions as practically to amount to exclusion. The tobacco planter, as well as other producing classes, discovered that the revolution had proved a swindle, and that a handful of the false coin of republican liberty was all that he had to show for the disasters of a seven years' war. This stubborn fact became apparent to the least intelligent mind, for poverty, debts, and hard times, produced throughout the Union a relaxation of social order. Counter-revolution began to be talked of among the people, and such men as the great orator expressed their disappointment with the Republic. The politicians became alarmed, and letters flew from one to another. Jefferson was sent to France to induce an ally, a despotic king, to change, for the advantage of a republic, the principles of a revenue and a commercial policy which was rooted in custom, and the interests of large moneyed classes in the kingdom. It was necessary to soothe Virginia, moody at being despoiled of her trans-Ohio domain at the time that she was distressed in her finances, and in every branch of

her trade. The politicians did not forget that the bold temper that had led in revolution might lead in a reversal of the disastrous event.

To a conciliating address, and great good temper, Jefferson united varied knowledge and a large acquaintance with public affairs. His understanding was both comprehensive and acute, and he spoke the French tongue with accuracy, grace and fluency. Thus qualified, thus accomplished, thus adorned, he appeared at the Court of the French king and opened negotiations with the Count de Vergennes, still at the helm of affairs. In both countries it was the general expectation that a large commerce would arise between the allies, to which friendship, as well as mutual wants and capabilities, afforded probability. The United States offered productions raw, France those upon which skill and industry had been exhausted. Notwithstanding these inducements to a nautical traffic, added to the general expectation and desire, the French cabinet had been inactive, and had entertained only a silent wish for advantages which fortune had placed within reach. Repulsed on every side, the commerce of the Republic languished, and, so far as it survived, continued to flow in the old British channel. Braced by the difficulties of the situation, and encouraged by the hope of success, the accomplished Jefferson addressed himself to the task of extricating the trade of the two nations from the difficulty which environed it and placing it on a prosperous footing.

Some acts on the part of the French Court were done which manifested a disposition to cast off its inert policy. The manufacturers of the plated ware of Birmingham, the steam mills of London, copying presses, and other mechanical works, were invited to settle in France; and Wedgwood too, so famous for his earthenware in the antique style.¹ Those manufac-

¹ See Jefferson's Correspondence while at the court of France.

tures it was known had contributed to draw American trade to England, and it was supposed that a transfer of them to France would attract the American merchant, and thus strengthen the connections between the friendly powers. To rival Cowes in the English Channel, so important a depository of the colonial trade, the indefatigable minister solicited the enfranchisement of Honfleur at the mouth of the Seine. He said it would be the outpost of Paris, and from it the northern parts of the kingdom would be supplied with the unwrought productions of the New World, and, as Cowes had been, it would be the entrepot from which other countries would obtain a supply of those articles. In the same way Bordeaux, through the Garonne and the canal of Languedoc, might be made a centre from which the Southern provinces of the kingdom would be furnished. But these acquisitions were to be only introductory to a more extensive system, for the ambassador appeared as ready to innovate in French commerce as he had been to introduce novelties in the American modes of government.

But unfortunately for the success of Jefferson's mission, the principles of trade, as taught by Adam Smith, and as accepted now by enlightened statesmen, were not received by the government of the French king. The exchanges of commerce, now regarded as an elementary truth, were not supposed to be necessary to its existence, and surprise was expressed that the American trader did not sell his oil, tobacco, rice, furs, and breadstuffs in Bristol or London, and fetch the money to be expended in the purchase of French commodities. It was forcibly pointed out by Jefferson that it would be necessary to lay a basis for trade by a total relinquishment of the restrictive system, and by low duties, or no duties, to invite to the French ports every article that American industry could produce. A reduction on the oil duty was reluctantly conceded, but as it was to last only during the minister's plea-

sure, the inducement was not such as to justify the fishermen of Nantucket in rebuilding their ships, and it was restored by Montmorin when he succeeded to the portfolio of State. The duty had been imposed on oil to encourage French fishermen who might be drafted into the royal navy. The oil duty then was a part of the system of the national defences which the adventurous minister proposed to change.

It was agreed to receive the rice of Georgia and of the Carolinas on such terms as would enable it to compete with the rice of Italy and Egypt. But tobacco was on the worst possible footing for the interests of commerce. It was a monopoly in the hands of the farmers general, a privilege for which they paid a large sum into the treasury of the King. To break that monopoly constituted the most difficult and the most important particular of Jefferson's mission, which would, he said, divert to France the torrent of wealth which America was pouring into the lap of Great Britain. The farmers had made their purchases from London or Cowes, had always paid in money, and continued to resort to the same markets, though occasionally they obtained their supplies in the United States. But even then, Jefferson affirmed, payment was made through the medium of London remittances, and the returns were made in English commodities. In either case tobacco was lost to the commerce of the allied states. Political independence had not produced commercial independence to the Federal states. The old vassalage continued with additional aggravations. It was no easy task to destroy the system of finance and trade in which those evils originated, and have the tobacco of the Union placed on the list of commerciable articles. The lucid statements of Jefferson showed that if it were done, commerce, unopinioned, would rise up like a strong man, and prosperity would be the result. But his efforts proved to be unsuccessful. The King received from the farmers general

for the tobacco monopoly twenty-eight million livres—too considerable a sum, and too important to the revenue, it was thought by the sagacious Premier, to be tampered with. The collection by farm was of ancient date, and it was hazardous to alter arrangements of such long standing and such infinite combinations with the fiscal system. Jefferson expresses the opinion that, as the farmers were great capitalists, it was not safe for any minister to enter into a contest with them, and insinuates that an unworthy motive governed the action of the Count de Vergennes. The mission failed, and Jefferson advised his countrymen to cede to Congress a jurisdiction over commerce, that, by counter-restrictions, the ports of Europe might be opened to the tobacco trade of Virginia and Maryland. John Adams, at the Court of London, vainly attempted to relax the severity and excite the compassion of his old master towards the commerce of his revolted subjects. But King George was inexorable: America had broken from the British Empire, had sought independence, had found it, and his majesty was resolved she should enjoy that blessing to its fullest extent.

CHAPTER XIII.

THE MACHINE.



HAT there is, or can ever be, in any nation, an instructed, impartial, wise, and sovereign tribunal called "The People," to which all political questions may with safety be referred for adjudication, is an error which lies at the foundation of Republican government. It is this opinion which arrays the Republic in deceitful colours and places it on a false bottom. If it were

possible for the political population of any country to constitute such a senate, endowed with all the faculties for executing its decrees, the Republic would be indeed a political Paradise. But the opinion is an illusion, a phantom, a mirage that swims and dances before the mind of the enthusiast. The United States is one of the most civilized and intelligent nations that has ever existed, and if its experience with Republican government teaches any truth fully, definitely, and satisfactorily, it is that such a belief is entirely erroneous. The voters are necessarily deprived of agencies requisite to supply them with full and correct information with respect to public affairs as emergencies arise; nor could they possess the extensive and various knowledge which the discharge of so responsible a duty would demand, and that, too, whilst they are occupied with the business and oppressed with the daily and hourly cares of life.

Statesmanship is the highest and most difficult occupation in society, and requires an absolute devotion to itself. It is a theatre upon which the mind displays its greatest qualities. It is there that we meet a Bismarck, a Chatham, a Gortschakoff, and a Beaconsfield. The proposition that society, organized and occupied as it is, could perform that part, could not be true, and an actual experiment in self-government by any nation must be fatal to it. Whilst voters, in their primary assemblies, are deliberating on the concerns of the state, their private business would be neglected, and their families and homes would perish. These practical difficulties and insurmountable barriers to popular self-government became apparent as soon as the system was set in motion. But then it was too late; the error does not admit of remedy. A government has its constabulary, its navy, its army to defend it, and must live its life. It may well be doubted whether the founders of the American system of popular sovereignty, or at least the far-sighted among them (we

know that Madison was not), were deceived into believing that it was a preparation for self-government by the voters, inasmuch as their various constitutions did not provide means by which the voters, from time to time, could issue their mandates to their representatives as occasion might demand, and so be in truth the rulers and governors of the country. Elections for stated periods, with no means of direction or control, placed in the hands of the people, is not self-government by the people. Such a system, experience shows, creates politician government, and is exposed to all the objections, numerous as the stars, which exist to such creations; and the imperfect development which the popular principle of government has received in the United States condemns the principle itself, for it does not appear capable of being carried farther. It has been asserted by some ingenious theorists that the principle of representation, as it appears in modern politics, originated in the councils of the Christian Church. If so, the debt to the Church in this respect is not a great one, for the discovery has only enabled mankind to create politician government, and that is the extent of the obligation. In his Bristol speech, directed against the right of the constituent body to instruct their members of Parliament, Burke, in a very brilliant oration, but with the arguments of a sophist, defends the government of the politician, for his argument is based on a misconception or mis-statement of the representative trust.

Political representation is a species of agency, and is not separable from its nature and principle. As soon as by any process the agent becomes emancipated from the control of the principal, as Burke's argument would make him, he is an independent depository of power, and the agency terminates. When the orator points out the gross absurdity of the representative hearing the argument in London, whilst the voter decides the question in Bristol, he exposes in a

very forcible manner the inconsistency of popular government. If he had contended that the election only creates politician government having a popular birth, to which a right of instruction would not naturally or reasonably attach, some might agree with him. But it is a great misnomer to call such a system a government of the people. Unless the government be confessedly a government of politicians only, no one can successfully impeach the right of instruction ; for it is an inalienable right belonging to every principal to guide the action of his agent, and we do not abolish or impair the right by calling the agent a member of Parliament. All that, logically, could have been claimed by Mr. Burke, was that the right of instruction was one for which the laws of England had made no provision, and that as soon as the elections are over the House of Commons was transformed into an independent body, a solecism as a result of a popular election, unless it be of a king or an emperor.

It was an admission, resting in matter of fact, that the Republic was not a government of popular responsibility when the mass of voters, renouncing their judicial character, and assuming that of partizans, separated into opposing parties, headed by their chief men. By that act alone the nature of the government was made to undergo a radical change. The party platform was introduced, and completely established the lines of demarcation between the opposing parties, and supplied the voters at once with a political creed and a test of orthodoxy and obedience. At the same time that it afforded to the representative a criterion of party fealty, it, to this extent, protected him from responsibility, and attached every voter to the organization. It was this change, a necessary development it appears, which converted the Republic at the outset into a government of factions, and devoted it sooner or later to a violent end. Those embittered parties, more hostile than opposing armies,

absorb the being of voters. The party convention is the agency which crowns the structure, and is as necessary, as an organizing power to the working of a political party in America, as platoon, regiment, and brigade are necessary to the efficient action of an army. The politicians have the county convention, the state convention, the national convention. In these assemblies declarations of political faith are conceived, formulated, and published—the platforms on which political parties stand in elections. The convention rests on the ward or precinct meeting as a foundation, which, by a fiction of politics, voters are supposed to attend, and this fiction lies at the base of the column. But if the representative principle had been introduced at the precinct meeting, it is clear that in the rising series of dependent conventions it would be speedily and entirely lost. The system thus developed becomes the play of "Hamlet" with the part of Hamlet left out. It is upon the false theory that through these removes and gradations the final convention reflects the wishes of the voters that the claim of the Republic rests of being a government of the people. In this convention system a great deal is seen of the politician, great and small, but little or nothing of the people until voting day comes, when they attend the polls in drilled and organized masses. Election day is the only part of the business that the leaders cannot manage with perfect success without the people. The head men demand a power of attorney, some show of authority from the voters, and that the convention, with its presumed popular derivation, gives them.

It has been stated that the first step in the business of self-government by the people has not been taken, for the voters, except in inconsiderable numbers, do not attend the primaries, from pre-occupation, or because the proceedings are plainly a sham, or that they are reluctant, by any act of theirs, to confer authority

on delegates over whom they have not the least control. But, good or bad, this is the mode by which county, state, and national politics are managed in the great Republic of the West. The voters have the system set before them—inception, progress, conclusion—and they comprehend in the clearest manner its utter hollowness and unreality as a government of the people. In despair they abandon the field to the politicians and their personal retainers, disciplined household troops, with whom they cannot contend with any hope or prospect of success. Yet such is the nature of man, when the work is done, and each party is mustered on its platform—so violent is political animosity in the Republic—that the edicts of managers are received with punctual obedience. When local orators, or even candidates for office, would collect the people to hear political discussion, an occasion is again supplied, when the voters very strikingly display their apathy in politics. They cannot be induced to leave their homes and occupations for objects of that kind, unless a special attraction is held forth—a barbecue, a band of music, or a stranger of distinguished eloquence—a Daniel, a Conrad, or an Ellis.

If the voter is interrogated why he does not attend the primary meetings of his party, he will answer: "I have no time to spend in that way;" or, "It is of no use, for when I get there I will find that the business has been attended to." Such, indeed, is the case. The chairman who has to control the meeting has been designated, the resolutions have been digested and drafted, the candidates have been selected, and all that the bewildered countryman can do is to accept the work in silence. The predetermined result is announced, perhaps by a committee; the meeting is adjourned; and the country voter returns to his home, marveling how little the people have to do with the government of a Republic. He is right; the system is a false pretence, a sham, a humbug, and the people

have, in reality, as little control in a Republic as they have in any Monarchy. Such is "the machine"! It moves with an irresistible momentum, it crushes independence of action and thought, and generally prefers for the highest offices of the Republic fortunate or subservient mediocrity, often with a large amount of "boodle." Thus are men nominated for the presidential office of whom often the states have not heard before, instead of the Websters, the Calhouns, the Bentons, who have been chosen in the hearts of the people. This is the power which, with the sway of a Roman dictator, governs the United States of America. The voter there is a nonentity; he is as much subordinated and lost by machine politics as a ryot of Hindoostan. Voters comprehend this, and when the huge Federal conglomerate falls in pieces, mankind will be astonished at the little reluctance with which they surrender the franchise. Each of the factions has its machine with which fierce battle is made. They plot and they counterplot, they mine and they countermine, until the subject of controversy is destroyed, when a sorrowful people, aweary of the Republic, its antagonisms, its agitations, and corruptions, invoke the soldier to save them from the politician. Like a cloud the convention gathers, like a cloud it disperses. The party machine is set in motion by an executive committee with a superintendent at its head, perhaps an enterprising young lawyer, to direct when and where the primary assembly is to be held. That despotic system, the work of the politician, has grown up in America outside of the law, and yet is far stronger than the law.

When the Constitution of 1787 was submitted to the states for consideration, as it was an experiment, every perfection could be attributed to it without the fear of successful contradiction. It is this which renders innovation in politics so enticing, and theoretical government so dangerous. It strikes the human

mind where it is most infirm in its tendency to theory and imagination. It was an immense advantage to the constitution that it had never been tried, that the system which it recommended was a new one, but it was not so great a one as the assumed infallible judicial character of the people. If a probable hardship or apprehended wrong was suggested by some jealous alarmist, a satisfactory answer was always ready: "A wise and virtuous people, interested only in the right, and present everywhere, would prevent or correct every assumption or abuse of power." To deny the truth of that assertion, to impeach the validity of that argument, was to impugn the capacity for self-government of a sovereign people.

Pennsylvania was the first of the states to call its convention of ratification, but the second to accept the constitution, Delaware being the first, and James Wilson, statesman, lawyer, debater, and adventurous philosopher, was the only one of the fathers who sat on that floor. When pressed hard in the debate, that skilful logician would defend the constitution with this weapon: "The people of the United States," he would say, "are now in possession and exercise of their original rights. Whilst this doctrine is known and operates we shall have a cure for every disease." As Mr. Wilson spoke, other advocates asserted and protested on every theatre of discussion within the circle of the Union. However illusory that opinion, it carried ratification in triumph through the contest where more questionable and grosser means were not employed. The judgment of Washington, who had no political experience, and very few political ideas of his own, perhaps was deceived by that glamour. He did not discover the witchery until Jefferson, retreating from the portfolio of State, rapidly organized an opposition party, and opened his guns on the phalanx and the president, who was held by them as a prisoner of State. The ex-soldier very speedily then was unde-

ceived. He discovered that the government which he had founded at the cost of so much blood, chicane, and deception, was but a creation of political parties, or "factions," as he bitterly called them, which, when the end came, would settle their quarrel with the sword. Until then, the high priest and chieftain of Federalism had listened only to the dulcet notes of flattery, whispered into credent ears, but now he was to hear a fierce democracy bellow around the Federal palace, informing its occupant that another coalition had been formed, even the coalition of equal rights, to drive the spoils coalition from power. Washington knew nothing of the teaching of books; it was the weak point of his public character; but the alphabet of facts he understood as well as any man. When he returned to Mount Vernon to die, worn out in the service of a grateful and an admiring Republic, he understood that the system which he had made and set at work was one to be dominated by alternate factions, and that the system was not liberty.

A popular and able historian of Scotland has asserted that the greatest uninspired production of prose literature is the farewell address of General Washington to his countrymen. Perhaps the paper deserves the exalted encomium; for assuredly it contains much truth, but in no part so much as where it speaks in vehement condemnation of party government, such as he had founded. The farewell address had an illustrious origin. It was written by Hamilton and Madison, from heads supplied by Washington. It speaks eloquently and impressively of the dangers of faction to free government, and, if it stood alone, would render the address worthy of the eulogy of Sir Archibald Alison. In terms it was addressed to a people who had reposed happily and safely under the protection of the British Crown; but it is a solemn warning to all nations to avoid the Republic, as it points to the gulf of fire into which, in frenzy, it finally throws itself.

It is the voluntary testimony of three among the greatest men of the revolution, after eight years of Republican life, under a government framed with exquisite skill by the best talents of a continent. The opinions of the men who performed the penwork of the address we know ; but you who worship the hero-gods, attend to that of Washington, as, in immortal print, he descants on the instability and dangers of Republican government : " Party spirit," says this world's hero, " is inseparable from our nature, having its roots in the strongest passions of the human mind. It exists, under different shapes, in all governments, more or less stifled or repressed ; but in those of the popular form it is seen in its greatest rankness, and is truly their worst enemy. The alternate domination of one faction over another faction, sharpened by the spirit of revenge, natural to party dissension, which in different ages and countries has perpetrated the most horrid enormities, is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries which result, gradually incline the minds of men to seek security and repose in the absolute power of an individual ; and sooner or later the chief of some prevailing faction, more able or more fortunate than his competitors, turns this disposition to the purpose of his own elevation on the ruins of political liberty."

With this declaration in print before our eyes, we have no occasion to resort to tradition to be told that General Washington had lost confidence in the stability of the Democratic government which so recently he had established. His gloomy anticipations of the closing days of the great Republic would have been realized in its one hundredth anniversary, in the disputed election of Tilden and Hayes for the presidency of the Union, had not the catastrophe, with the consent of the factions, been averted by a reference of the controversy to an extraordinary

tribunal, whose action forms the subject of the ensuing chapter.¹

CHAPTER XIV.

THE ELECTORAL COMMISSION.



HE Electoral Commission, and the events which produced it, present the Republic in an unprecedented aspect, and form a necessary part of a survey of the general working of the American constitution. It is inserted in juxtaposition with the extract from the farewell address, as it goes far to justify the prediction of Washington, that the Democracy of the United States, sooner or later, would end its wild career in domestic bloodshed and military despotism. To enable the unprofessional reader to comprehend a subject so far removed from the circle of his information and thoughts, it will be necessary to explain the origin and necessity of this unusual court. Actors and events will be treated with the freedom and impartiality of history.

A century had elapsed since a Congress of the colonies, deputed to obtain from the British Crown a redress of grievances, had proclaimed the independence of the colonies. The Republic was engaged in celebrating an anniversary of its unexpected and illegitimate birth, when the politicians seized the festive occasion to present their government to the nations in its true character. The factions, ante-dating

¹ Washington, January 21st, 1886. In the Senate, Mr. Sherman, of Ohio, took the floor and said: ". . . . In 1877, the change of one vote would have altered the result. Civil war was only avoided by the contrivance of the Electoral Commission." ("New York Herald.")

the existing genesis, but each under an *alias*, are found waging the accustomed warfare, but upon a greatly expanded theatre. At first, principles of government and policy, distinct and lasting as the hills, had divided them ; but these, grown burdensome or inconvenient, had been flung aside by those combatants, and now the avowed object of the contention was to control, for a presidential term, the wealthiest government in the world, having at its disposal, as a spoil for the victor, the custody of the public treasures and the disposition of a multitude of lucrative offices. The presidential election had been held, and the result made known, that Mr. Tilden, the Democratic candidate, had been defeated by General Hayes, the Republican candidate, by *one* electoral vote. A majority so capricious and accidental at once aroused suspicion, and soon it was asserted by the inquisitive newspaper that that result had been produced by frauds of an unblushing character, perpetrated by the returning officers of the states of Florida and Louisiana. To discover the truth in respect to so grave a charge, it is necessary to examine an event so instructive in the methods of a free government.

The Constitution of the Union in its second Article provides that : " The executive power shall be invested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president chosen for the same term, be elected as follows : each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in Congress ; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector. The electors shall meet in their respective states and vote by ballot for president and vice-president, one of whom, at

least, shall not be an inhabitant of the same state with themselves ; they shall name in their ballots the person voted for as president and, in distinct ballots, the person voted for as vice-president ; and they shall make distinct lists of all persons voted for as president and of all persons voted for as vice-president, and the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the president of the Senate ; the president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall be counted ; the person having the greatest number of votes for president shall be president, if such number be a majority of the whole number of electors appointed ; and if no person have such majority, then from the persons having the highest number (not exceeding three) on the lists of those voted for as president, the House of Representatives shall choose immediately, by ballot, the president. Congress may determine the time of choosing the electors, and the day on which they give their votes, which day shall be the same throughout the United States."

The provisions of the Federal statutes applying to the subject are as follows : " Section 136. It shall be the duty of the executive of each state to cause three lists of the names of the electors of such state to be made and certified, and to be delivered to the electors on or before the day on which they are required by the preceding section to meet.

" Section 137. The electors shall vote for president and vice-president respectively in the manner directed by the constitution.

" Section 138. The electors shall make and sign three certificates of all the votes given by them, each of which certificates shall contain two distinct lists, one of the votes for president and the other of the votes for vice-president, and shall annex to each of

the certificates one of the lists of the electors which shall have been furnished to them by the direction of the executive of the state."

At first electors for president and vice-president were appointed by the state legislatures, but the mode was changed, and by direction of statute law, they were appointed by the qualified voters on the seventh day of November, the time appointed by the 135th section of the Federal statutes, passed in pursuance of the constitution, but not embraced in the above list of statutory legislation. In South Carolina, before the Civil War, electors were still appointed by the legislature, thus avoiding the tumult, agitation, and corrupt practices incident to a presidential election, and they are still so appointed in the state of Nevada.

The election law of Florida resembles, in substance, the election law of every other state, the object of that class of enactments being to collect, at a final point, the votes given at the precinct elections, thereby ascertaining the candidate who has received the greatest vote in the state. It is a question of addition, yet in Florida and Louisiana the board required to make it committed palpable frauds, and obvious perversions of the statute law. The election law of Florida provided as follows: "Upon the close of the polls the inspectors shall proceed to canvass the votes cast; that the canvass shall be public and continuous until completed, and the votes shall then be counted. If the number of votes exceed the number of persons who have voted according to the clerk's list, the excess is to be publicly drawn out by lot and destroyed. Duplicate certificates of the result are then to be sealed up and sent to the clerk of the Circuit Court and to the judge of the county. Upon the receipt of the returns from the voting places in the county, the judge and the clerk are directed to meet at the clerk's office, and, with the assistance of a justice of the peace

of the county, proceed publicly to count the votes, as shown by the returns on file, and forward the certificates of the result to the secretary of state and the governor. Within thirty-five days after the election, the secretary of state, attorney-general, and clerk of the Supreme Court, are to meet at the office of the secretary of state and canvass the returns. If returns from any county shall appear, or be shown, to be so irregular, false, or fraudulent that the board shall be unable to determine the true vote for any such officer or member, they shall so certify, and shall not include such return in their determination and declaration, and the secretary of state shall preserve and file, in his office, all such returns and accompanying papers."

It is apparent that this law confers on a board of state canvassers the authority, and imposes upon them the duty, to count the votes as they appear on the county returns, and declare the result, but to exclude such as are false, fraudulent, or irregular. It had been determined by the Supreme Court of Florida in 1870 that the duty of the board was simply ministerial, after the genuine character of the county returns had been ascertained. On this point the court say: "The object of the law is to ascertain the number of votes cast and determine therefrom the number of votes cast, and certify the result of the election. It is the duty of the state canvassers to determine whether the papers received by them, purporting to be returns, were in fact such, and were intelligible, genuine, and substantially authenticated by law." These conditions being complied with, it was the duty of the board to canvass and count the votes, and, from the face of the papers, declare who were the elected candidates. It is now known, and admitted to be a fact, that if this direction of law had been obeyed, the Tilden, or Democratic electors, would have carried the state of Florida by a majority of ninety-one votes; instead, the Hayes, or Republican

electors were made to receive a majority of nine hundred and twenty of the popular vote. This result had been obtained by the board of canvassers through the exclusion, without the slightest colour of law, of the entire vote of one county and parts of the vote of three other counties. The ceremony of hearing witnesses and the arguments of counsel was observed by the board, sitting as a court, but its decision was withheld until the 6th day of December, the time indicated by law for the electors to assemble—a fraudulent contrivance on the part of the returning officers, as hereafter will fully appear. On that day it was announced that the Hayes electors had received a majority of the votes of Florida, and also the Republican candidate for governor, voted for at the same time, and on the same ballots, was declared to be elected.

Upon that assumption of jurisdiction by the canvassing board, sustained by the certificate of the Governor of Florida, and that of the canvassing board, the Republican case was admitted finally to stand before the High Court of the commissioners.

The Republican Governor of Florida, in compliance with the Act of Congress, certified the election to the Hayes electors, whilst Attorney-General William Archer Cocke, honourably known in the world of letters, as in his profession, certified the election of the Tilden electors. Each college of electors voted on the designated 6th day of December, and each in its mode of proceeding complied with the terms of the law. As soon as it was announced that the canvassing board had given certificates of election to the Hayes electors, as the governor had done, an action at law was instituted by the Tilden electors to try the title to the office of elector in dispute between the two sets of electors. At a later day, a decision was rendered in the case, condemning as vicious the title of the Hayes electors. To that suit the defendants

pleaded, and, in the proceedings, the votes, as returned to the state canvassers, were subjected to the scrutiny of a legal tribunal, but judgment could not be rendered until a day subsequent to that on which the college of electors had voted, but prior to the time when the certificates were opened in the presence of the two Houses of Congress by the President of the Senate and the votes counted by tellers.

From this abortive judgment of the court, rendered when no judgment of ouster could be given, we understand why the certificates of election were withheld by the board of canvassers until the last moment. At the same time a suit was brought by the Democratic candidate for the governorship for a mandamus to direct the state board of canvassers to re-canvass the vote in the Gubernatorial election, according to the laws of Florida. The Supreme Court of the state, composed of a majority of Republican judges, rendered a judgment, in that proceeding, that the board of canvassers had exceeded its powers, and had usurped a revisory jurisdiction over the returns from certain counties, and commanded it to canvass and count the votes as returned from those counties. Another canvass of the vote was made accordingly, and Governor Drew, the Democratic candidate, who had received Tilden's vote in the election, as his opponent had received Hayes' vote, was declared duly elected by the aforesaid majority in the state of Florida. In this indirect and collateral way the controversy between the presidential candidates was examined, and the result declared that Tilden and Hendricks, illegally and fraudulently, had been deprived of Florida's vote.

But the investigation did not stop here. All the energy of the Democratic majority in Florida was aroused. In the month of January, 1877, the legislature of Florida convened. Immediately a law was enacted which directed the Secretary of State, the Attorney-General, and the Comptroller of Public

Accounts, or any two of them, together with any other member of the Cabinet who might be designated by them, forthwith to meet at the office of the Secretary of State, pursuant to a notice to be given by the Secretary of State, and form a board of state canvassers, and proceed to canvass the returns of the election of president and vice-president, held on the 7th of November, 1876, and determine and declare who were elected and appointed electors at the said election, as shown by the returns on file in the office of the Secretary of State. That a greater authority might be imparted to the projected canvass, the Act of the Legislature further enjoined on that new board to canvass the returns according to the terms of the fourth section of the Statute of 1872, as construed by the Supreme Court of Florida in the case of *Bloxham versus Gibbs* and others, decided in 1871, and in that of *Drew versus McLin* and others, decided September 23rd, 1876. The board of canvassers are also instructed to make and sign a certificate containing the whole number of votes given for each elector, the number of votes given for each person for such office, and therein declare the result, which certificate was ordered to be recorded in the office of the Secretary of State, who was instructed to have it advertised in one or more newspapers published at the seat of government, that the people of Florida and the people of the United States might be informed of the truth. In obedience to that Act of the Legislature of Florida, the new board, by it authorized, examined the polls, and executed a certificate in these words: "That Wilkerson Call (and the other Tilden electors by name) are duly elected, chosen, and appointed electors of the president and vice-president of the United States for the state of Florida."

All that had been done up to this time had only, by unquestionable evidence, established the fact that the Democratic party, in the November elections, Federal

as well as state, had obtained the vote of Florida if the right could be made to prevail. Except for this ascertainment and certification of the truth, the action of *quo warranto* against the Hayes electors was a barren victory, as no judgment of ouster could be pronounced; the mandamus of the Supreme Court to compel the mandatory to re-canvass the votes in the Gubernatorial election had inured practically only to the advantage of Governor Drew, who, because of it, was inducted into office; and the re-canvass, conducted under the Statute of January 17, 1877, had only given the Legislature of Florida to understand and be informed that the Tilden and Hendricks electors, on November 7, 1876, had received 24,437 votes against 24,349 votes polled for the Hayes and Wheeler electors. The truth having been vindicated, and recorded in the archives of Florida, as well as officially declared to the public, the Legislature of Florida, charged by the Federal constitution with the duty of directing the manner in which presidential electors shall be appointed, adopted a bolder line of action, designed to bring the discovered fact and fraud directly and officially to the knowledge of the President of the Senate, or of any other person or persons who might count the electoral votes transmitted from the states. The object of that energetic action was to cure any irregularity that might attach to the certificate of Attorney-General Cocke by making it known to the Senate and House of Representatives met in convention, and known too to the President of the Senate, that Wilkinson Call and his associated electors were the true and only electors of Florida, and thus save that state to the candidates entitled to its suffrage. A state legislature acting in the sphere of its jurisdiction is possessed of a mass of inherent sovereign powers, and that sovereignty expressed itself in the statute now to be described.

That statute received the Governor's approval the

26th day of January, 1877. Its title was, "To declare and establish the appointment by the state of Florida of electors for president and vice-president," and in that way cure the effect of any irregularities which may have occurred in their appointment by the electoral college. The statute affirmed that on the seventh day of November, 1876, at the election then held, according to the county returns on file in the office of the Secretary of State, and by a canvass of the votes which had been made by the command of the legislature, Wilkinson Call and his associated electors had received a majority of the votes amounting to 92, and had been duly appointed electors in such manner as the legislature of the state had directed; that the late Governor, illegally and erroneously, did cause to be made and certified lists of electors to persons who had not received the highest number of votes, and withheld them from the electors entitled to receive them. It then declared the electors shown to have a majority, by a re-canvass of the votes, to be the true electors alone having the right to cast the vote of Florida. Next the statute contained an appointment of the Tilden electors, to save the state in case both sets of electors might be adjudged to have held by a defective title. The statute also provided for a lawful and conclusive authentication of the right of those electors declared to be the true ones, to cast the vote of the state and for the issuing of two certificates to the electors by the board of state canvassers and the Governor, so as to comply with the terms of the Act of Congress.

The electors again convened, and on the 26th of January cast their vote for Tilden and Hendricks, and, accompanied by the certificate of Governor Drew and their own certificate, sent the papers to the President of the Senate. Under cover with the certificate of the Governor of Florida were official copies of the two statutes, with an authenticated copy of the votes from the several counties, as canvassed by the state can-

vassers, and also in tabulated form ; and with these papers was sent the certificate of the state canvassing board. It could not then be a subject of a moment's doubt that the Electoral Commission and the two Houses of Congress were apprized of the fact that the Tilden electors, according to the recorded vote, had received the suffrage of Florida. The result of the illegal action of Governor Stearns and the canvassing board was to give General Hayes four votes which belonged, according to the law of Florida, to Tilden, reversing, as we have been informed, the result of a presidential election.

In Louisiana a similar result was accomplished by means not dissimilar. In that state, by a statutory creation called a returning board, Tilden and Hendricks were defrauded of eight other electoral votes. The crimes committed in the two states differed only in circumstance and scene of action—they were indeed but branches of the same conspiracy of the Republican party against the constitution. The returning board, unconstitutional in the opinion of such great lawyers as Thurman and Carpenter, had discretionary power conferred on it in particular cases over the election returns. In a case to which the discretion did not extend, they exercised power over the returns and rejected many thousand votes legally cast and legally returned for the Democratic electors. In this way the vote of Louisiana was given to the Republican electors. Such was the charge coming from New Orleans, which electrified the Union, producing indignation wherever it was known or repeated.

The law of Louisiana required, as a condition of suffrage, a registration of all the qualified voters, and supervisors of registration, with their clerks, were appointed in every parish by the Governor of the state to give effect to the statute. They were directed to hold a session of thirty days previous to an election to determine applications for registry. No appeal

lay from their decisions, and, if wrongful, no redress was afforded, unless obtainable by an action at law by the aggrieved party. The supervisors of registration had power also to designate the voting places in each parish, the voter being allowed the privilege of voting at any polling precinct within it. The law also provided : "That immediately upon the close of the polls on the day of the election the commissioners of election, at each voting place, should immediately proceed to count the votes, as provided by the thirteenth section of the Act, and after they had so counted the votes and made a list of the names of all persons voted for, and the offices for which they were voted, and the number of votes received by each, the number of ballots contained in the box and the number rejected, and the reasons therefor, duplicates of such lists shall be made out, signed, and sworn to, by the commissioners of election of each poll, and such duplicate lists shall be delivered, one to the supervisor of registration of the parish, and one to the clerk of the district court of the parish, and in the parish of New Orleans to the Secretary of State, by one or all such commissioners in person within twenty-four hours after the closing of the polls. It shall be the duty of the supervisor of registration, within twenty-four hours after the receipt of all the returns from the different polling places, to consolidate such returns, to be certified as correct by the clerk of the District Court, and forward the consolidated returns with the original received by him to the returning officers, as provided by the Act, the said report and returns to be enclosed in an envelope of strong paper, or cloth, securely sealed and forwarded by mail. He shall forward a copy of any statement as to violence, or disturbance, bribery, or corruption, or other offences, specified in section 26 of the Act, if any there be, together with all memoranda and tally sticks used in making the count and statements of the vote."

It was also provided by the election statute that, prior to the election day, the supervisor or the commissioner of election, on election day, might protest against the freedom or fairness with which the registration or election had been conducted, and if accompanied, or supported, by the affidavits of three citizens or more, that protest should be attached to the returns "by paste, wax, or some adhesive substance, that the same can be kept together and forwarded to the returning board." A duplicate of the protest is also directed by the statute to be filed with the clerk of the court of the parish.

At the Presidential election of 1876 the returns forwarded to the returning board disclosed a majority for Tilden and Hendrick's electors of 6,405 votes, unaccompanied by a single statement or complaint of "riot, tumult, bribery, or corruption," and but one complaint at all, and that was of a Republican fraud in Concordia parish. The returning board of Louisiana, under the peremptory directions of the Election Act, on that state of facts, had to perform the simple duty to canvass and compile the votes, and certify the result according to the truth. In 1874 this had been decided to be the proper construction of the law by a committee of the House of Representatives of Congress. In their report the committee said :

"Upon this statute we are all clearly of the opinion that the returning board had no right to do anything except to canvass and compile the returns which were lawfully made to them by the local officers, except in cases where they were accompanied by the certificates of the supervisor or commissioner, as provided in the third section. In such cases the last sentence of that section shows that it was expected they would exercise ordinarily the grave and delicate duty of investigating charges of riot, tumult, bribery, or corruption, on a hearing of the parties interested in the office. It never could have been meant that this board, of its

own motion, sitting in New Orleans, at a distance from the place of voting, and without notice, would decide the right of persons claiming to be elected."

But the returning board, resolving itself into a court, encouraged, out of time and out of order, accusations from various sources against the elections in various localities, and concluded by throwing out polls enough to give the vote of Louisiana to the Hayes electors instead of to the Tilden electors, to whom by a large majority it belonged—as was then being done in Florida; for the Republican party, it is repeated, were running both machines at the same time. It was weightily observed by one of the commissioners: "None of the objections to the certificates requires any scrutiny of the votes cast at the primary election, or calls in question the returns made by the officers who presided in the precincts. Throughout, the controversy has respect to the conduct of the state board of canvassers in dealing with the returns made by the county canvassers;"¹ of which authentic records had been preserved in the counties and parishes, to serve as a testimony of how those two states had voted in that presidential election.

In Louisiana the choice of electors and their certification was complicated with the claims to office of two governors representing the rival political parties, and embarrassing questions of law arose out of that conflict for the adjudication of the High Court of Commission. But the core of the matter, for the purpose of this chapter, has been given—which was to discover the point of the controversy and how it was dealt with by the Grand Council of Arbitrators created by Congress to decide that dangerous and agitating question. The electoral votes of Oregon and South Carolina were also claimed by each of the disputing factions; but these cases will not be examined here,

¹ Judge Nathan Clifford.

for the reason that when judgment was pronounced every commissioner voted against the pretension of the Democratic claimant in each case, and this notwithstanding the powerful and indignant protest of the great Democratic statesman and lawyer, Hon. Jeremiah S. Black of Pennsylvania, who to all the lore of his profession added the adornments of the scholar and orator, united with the noblest dispositions of a gentleman and the highest gifts of intellect.

When Congress assembled the public anxiety grew more intense. Debate increased it, whilst rumour plied all her arts. A report got into circulation that the Republican President of the Senate claimed the constitutional prerogative to count the electoral votes of the states and declare the result of the election, and that the Republican majority in the Senate would uphold him in that pretension. By this action on the part of the Senate and its presiding officer, the acts of the returning officers in Florida and Louisiana, and the false certificates of the two Governors, would be sustained and stamped as in accordance with law. If this were done, and submitted to, a revolution in government would be achieved, and the supremacy of the Republican party perpetuated by a minority of the voters in treaty with election frauds—consigning the Republic at once and for ever to a dishonoured tomb. There was high precedent, and assured constitutionality, to support that claim of the Republican party, for that course had been pursued when Washington was announced as President of the United States by the President of the Senate in the presence of the two Houses of Congress, sitting in convention. A certain sanctity appeared to attach to the proceedings of the first Congress, in point of time so near to the Convention of 1787, containing too so many of the bright intellects who had united in the creation of the constitution, in this particular then construed. There is, or ought to be, a respect attached to every

record, and this is the record in that case as found in the annals of Congress: "Monday, April 6, 1789. The speaker and members of the House of Representatives attended in the Senate chamber, and the president elected for the purpose of counting the votes declared that the Senate and House of Representatives had met, and that he, in their presence, had opened and counted the votes of the electors of president and vice-president of the United States, which were as follows," etc.

It was reported and believed, and the report added to the public excitement, that the President of the United States, His Excellency U. S. Grant, commanding the military and naval forces of the Union, adopted this view of the constitution, and that he would secure the induction into office of the candidate by that authority adjudged to be elected his successor. If this were done it was determined by the opposing party that Tilden and Hendricks, the undoubted choice of the voters, should be inaugurated by the Democratic House of Representatives. This action on the part of the two Houses of Congress would give to the Republic two presidents and two vice-presidents, and thus the long predicted war of the factions would have begun, bringing the end of American liberty according to the forms of the constitution. The public interest quickened, and its pulse beat fast, when President Grant ordered a detachment of artillery to the Federal city, and camped them near to the capitol, to be ready by inauguration day, and a convention of hundred thousand armed Democrats was projected to meet likewise in Washington to see that Tilden got his rights. But the public anxiety, grown so intense, was relieved by the co-operative action of the two Houses of Congress, out of which grew the Electoral Bill, which made provision for an amicable settlement of the presidential question, to which the factions were pledged to submit.

Mr. Jenks, a leading Democratic member in Congress, and an able advocate before the commission, expressed the universal opinion when he said: "The electoral commission is the last arbiter instead of a resort to arms." It was a question what part the late Confederate States would take in the pending quarrel, for in sixty days they could put in the field one hundred thousand of Lee's and Johnston's veteran soldiers. A member of Congress from Virginia, who had been a Confederate general, and who thus had a right to speak for the gray uniform, said: "We will wait until you Northern men are well engaged in this new war, and then we will strike for fair elections."

The Electoral Bill was a novelty in politics. It provided a court of lawyers to decide a great question of state. It had been boasted that it was a splendid attainment of a Christian civilization when armed nations, instead of the appeal of battle, referred their controversies to umpires. The trial by battle, as a mode of deciding the right, had been long disused in the common law courts. Now it was discarded from the tribunal of nations, and the Republic of the United States presented the sublime spectacle of compelling two truculent factions to bow to the same serene authority. Honourable Ashbel Green, from New Jersey, observed in a speech before the commission, that if the Electoral Bill determined nothing else, it had settled that the President of the Senate was not the authority designated by the constitution to count the electoral vote, but that high and delicate function of state was to be exercised by a convention of the two Houses of Congress, subject to the advice, when they chose to ask it, of such a court as the electoral commission. That eminent lawyer was right. The electoral law was a very solemn legislative construction of the constitution, and quite annulled and blotted out the precedent set in the first Congress. Our minds no longer are manacled: we breath freer when

independence of thought is asserted and blind unquestioning obedience is refused to the example of the first Congress.

It is proper that the structure of the High Court of Commission should be understood, and the mode in which the electoral questions were brought before it, as well as the extent and nature of its jurisdiction, before we proceed to examine its decision.

The Act of Congress, styled the Electoral Bill, provided that the commission be composed of five senators, to be chosen by the Senate, and five members of the House of Representatives, to be designated by that body, who should be associated with four judges of the Supreme Federal Court indicated by the circuits to which they were assigned, and one other judge of the Supreme Bench to be chosen by the four judges. This seemed to be very fair, and was so until the fifteenth member of the commission was elected, for the court was equally divided between the two political parties. Evidently, the most difficult part of the work was to obtain an impartial odd man, for upon him the inclination of the scale would at last depend, if partisan politics were to rule in the court as they had determined the appointment of every other commissioner. It was suggested in the public prints that the odd man should come from abroad. One said he should be His Serene Highness Prince von Bismarck, or the Chief Justice of England should be selected; another, that the great controversy ought to be referred to one of the crowned heads of the continent, to the Emperor Frederick, or the Czar, or to His Majesty of Austria-Hungary. But none of these propositions satisfied the Democracy of the American Republic. It was thought the dignity of the Republic demanded that she should not go out of herself to determine her domestic differences, and Congress, acting on this principle, took the most prudent course that the case would allow. The law, after directing

that the odd man should be taken from the Supreme Federal Court, proceeded to say that he should be selected with reference to his "impartiality and freedom from bias"—an honourable distinction which the fifteenth commissioner, when picked out, merited by voting with the Democrats on immaterial occasions. It would have demanded an Aristides to comply with the description of Congress, and there was no Aristides among the Republican judges of the Supreme Federal Court. Counting the odd man according to his political affiliations, to which, when the final votes were given, he adhered with the tenacity of a ward politician, the Electoral Commission, at the period of its organization, stood eight Republicans to seven Democrats. The people, looking on the novel spectacle, said in their homely way: "Eight will out-vote seven." At the time of their appointment there was some high talk in the country of the severe justice to be obtained by the introduction of five Supreme Court judges into the commission. But a wise man observed: "The judges, equally as the politicians, will stick to their party, and vote the crown to Hayes. There is not the slightest chance for Tilden from that direction."¹

The Federal statute further directed that when there shall be contesting electoral certificates sent to the President of the Senate, and opened by him in the presence of the two Houses, there might be written objections to each certificate filed by senators and representatives, and all certificates, votes, and papers accompanying the same, together with such objections, shall be forthwith submitted to the commission, which shall proceed to consider them. That high court of arbitration, to enable it to perform the duty thus devolved on it, was endowed by the Electoral Act with all the powers in that regard which were possessed by the two Houses acting separately or in conjunction. That court,

¹ My deceased friend, Major Rice W. Payne, of Warrenton, Virginia.

advisory to the two Houses, was instructed to decide, by a majority of votes, "whether any or what votes from such states are the votes provided for by the constitution of the United States, and how many and what persons were duly appointed electors in such states, and may therein take into view such petitions, depositions, and other papers, if any, as shall by the constitution and now existing law be competent and pertinent to such consideration." The question ultimately turned upon the admissibility of evidence of the perpetration of frauds charged upon the returning officers. The Electoral Bill was drawn by a Republican senator, known to be one of the ablest lawyers in the Union. It will instruct us in the genius of American politics to have laid bare the purpose of the draftsman by a distinguished advocate of the Republican party before the commission. Mr. Stoughton, of the New York bar, said: "The law under which this commission was created is an extraordinary exhibition of subtlety and care. It had a subject to deal with not easy of solution. We know all the surrounding circumstances; we know the causes which led to the framing of the bill; we know why its language was couched so inexpressively of power delegated here. We know that conflicting opinions were to be harmonized, not by uniting upon language which had meaning, but by that which, for certain purposes, conveyed none—I mean none as to the expression of an opinion of Congress."

When in the roll of states Florida was called, the President of the Senate opened three electoral certificates marked by the commission as numbers 1, 2, 3, with which, and their accompanying papers, already we are acquainted, and they were all referred to the commission for disposition. When we break through the shell of the case, and get around all interposed obstacles, the question referred to the commission was this: Which set of electors had been deputed by

Florida, and which by Louisiana, in the recent national election, to cast their votes for president and vice-president? It was a question of fact. Any competent tribunal, disposed to do the right, could have performed that duty easily and quickly by having recourse to the records of their electoral votes jealously preserved in those states by public authority, under the fifth rule of the commission—a command, a subpœna *duces tecum*, issued by the clerk to the depositaries of those records, to produce them to the commission for inspection, would have attained that object. In the case of Florida that record had thrice been examined by a revising authority: once by the circuit court of Leon county, in the *quo warranto* suit between the two sets of electors; the second time in the mandamus case of Governor Drew, before the Supreme Court of Florida; the third time by a special board appointed under a statute of Florida; and the record, preserved in the office of the Secretary of State, where it still is, could have been interrogated a fourth time by the commission had they so minded. The records in each case had been vouched, and the cases ought to have been heard and determined according to the evidence of those records, in conformity with the common law, whose authority was so often invoked by the judges and lawyers of the commission, but in this instance invoked in vain.¹

¹ Judge Black was very emphatic and persistent in claiming the authority of the records. I quote from his speech in the Florida case (Electoral Count, pp. 98-9): "In this case we show that it was fraudulent. How? by producing the evidence, which the Governor was as well aware of as we are, which every man, woman, and child in this nation knew, or had reason to believe, was true, namely, that the other set of electors had a decisive and clear majority of the votes that were received and counted at the polls. He knew it, because it was recorded in every county of his state; and the votes were collected together and filed in the office of the Secretary of State. That is one way in which we show the falsehood and the fraud; but we show i

Sir Edward Coke was Chief Justice of England in the reign of King James I., and is the Delphic oracle of the common law. He lays it down as a rule that, where a case is evidenced by a record, it must be tried by the record, and by nothing else. A certificate of its contents is not admissible evidence to prove the contents of the record. The great English lawyer says : "A record, or enrolment, is of so high a nature, and importeth in itself such absolute verity, that if it be pleaded there is no such record, it shall not receive any trial by witness, jury, or otherwise, but only by itself." The record must be brought into court that it may be inspected by the judges, and its contents ascertained. When the vote of Florida, or Louisiana, was questioned by the challengers, or doubt raised by competing certificates, or by other means, it was the evident duty of the counting authority, whoever that might be, to have sent for the record and have inspected it in the face of the public. But the commission, the substituted agent of the convention of the two Houses, entertained scruples of law which interposed. They were barred, those learned judges said, from looking at the record by two certificates of its contents, one executed by the governor of the state, the other executed by the returning officers, although both certificates were impeached as false and fraudulent by the most respectable authorities. Never before, where the common law of England was held in respect, or any other civilized code of laws, was an impeached certificate of the contents of a record accepted, when

again," &c. But Charles O'Connor, the great American lawyer of his day, was not less emphatic as to this matter than his colleague: "If they (the board of state canvassers) are not state officers, then we have done with the canvass of the state board, and have only to look, in case you pass by the governor's certificate, to the next element of truth, and that is the whole set of county returns, which being footed up would show the result to be as we claim, and that the governor's certificate was utterly false." (*Id.* p. 132.)

the record was in existence and accessible, and where it was claimed by one of the litigants as the witness who should testify in his behalf.

With a change of name, the case of Florida, as we know, was the case of Louisiana, in respect to the pivotal point. The Northern authority had sent its armies to the capitals of those states on the errands of war, and could have sent its marshals to them on an errand of peace and justice, to have obtained the evidence preserved by those states with sedulous care, of the manner in which they had voted in the national election in 1876. These records were not allowed to speak and tell what their contents were, but what is called technical law was suffered to fetter and control the award of the court. In consequence—it seemed to have been the objective point in each case—electors, authorized neither by Louisiana nor Florida, were suffered to intrude into the electoral office with false certificates in their hands as a passport. The result was that twelve votes were allowed by the overseeing and counting authority for the Republican candidates which the voters had given to the Democratic candidates. It was equivalent to allowing the returning officers, and the governors of those states, by the effect of their certificates, to appoint the electors from those states, and it might be repeated in any presidential election in any state. This was what the eight commissioners decided to be law. Be it known and held in remembrance that this studied affront to law and justice was not offered by an obscure county court, holding its sessions on the frontiers of the Union, where a wild-cat law is supposed to be administered, but by the highest national court, an extraordinary court, constituted to find out truth and do justice, sitting in the capitol of the Great Republic! One of the commissioners, Mr. Justice Nathan Clifford, in language which deserves to be known and remembered, condemned that perversion of political and

private right: "Without the right to introduce evidence, a trial, in any case, is a mockery, and in this case the refusal to hear evidence is the height of injustice, as it amounts to an *ex parte* decision in favour of the persons claiming title under certificates No. 1, without having examined or considered any one of the objections filed to that supposed muniment of title. Such a decision is forbidden by every consideration of law and justice. It will shock the public sense, and when a knowledge of it reaches other lands it will shock the wise and just throughout the civilized world."

The judgments in the cases of Florida and Louisiana are records of the United States, and ought to speak for themselves; and first the judgment in the case of Florida: "The Electoral Commission, mentioned in the said Act, having received certain certificates, and papers purporting to be certificates, and papers accompanying the same, of the electoral votes of the state of Florida, and the objections thereto, submitted to it under said Act, now report that it has considered the same pursuant to said Act, and has decided, and does hereby decide, that the votes of Frederick Humphreys, Charles H. Pierce, William H. Holden, and Thomas W. Long, named in the certificate of M. L. Stearns, governor of the said state, which votes are certified by the said person, as appears by the certificate submitted to the commission as aforesaid, and marked No. 1 by said commission, and hereby returned, are the votes provided by the constitution of the United States, and that the same are lawfully to be counted as therein certified, namely, four votes for Rutherford B. Hayes of the state of Ohio for president, and four votes for William A. Wheeler for vice-president.

"The commission has also decided, and hereby decides and reports, that the four persons before named were duly appointed electors in and by the state of Florida.

“The ground of the decision, stated briefly, as required by the said Act, is as follows: That it is not competent under the constitution and the law, as it existed at the passage of the date of the said Act, to go into evidence *aliunde* the papers opened by the President of the Senate in the presence of the two Houses, to prove that other persons than those regularly certified to by the governor of the state of Florida, in and according to the determination and declaration of their appointment by the board of state canvassers of said state prior to the time required for the performance of their duties, had been appointed electors, or by counter-proof to show that they had not, and that all the proceedings of the court, or Acts of the legislature, or of the executive of Florida, subsequent to the casting of the votes of the electors on the prescribed day, are inadmissible for any such purpose.

“As to the objection made to the eligibility of Mr. Humphreys, the commission is of opinion that, without reference to the question of the effect of the vote of an ineligible elector, the evidence does not show that he held the office of shipping commissioner on the day when the electors were appointed.

“The commission has also decided, and does hereby decide and report, that as a consequence of the foregoing, and upon the grounds before stated, neither of the papers purporting to be certificates of the electoral vote of the said state of Florida, numbered two (2) and three (3) by the commission, and herewith returned, are the certificates or votes provided for by the constitution of the United States, and that they ought not to be counted as such.”

On February 19, 1877, in the assembly of the two Houses, the opinion in the case of Louisiana was read by the Secretary of the Senate as follows: “The Electoral Commission mentioned in the said Act, having received certain certificates, and papers purporting to be certi-

ificates, and papers accompanying the same, of the electoral votes in the state of Louisiana, and the objections thereto, submitted to it under the said Act, now report that it has duly considered the same, pursuant to said Act, and has by a majority of votes decided, and does hereby decide, that the votes of William P. Kellogg (and his seven associates), named in the certificate of William P. Kellogg, governor of said state, which votes are certified by said person, as appears by the certificates submitted to the commission, as aforesaid, and marked numbers one (1) and three (3) by said commission, and herewith returned, are the votes provided by the constitution of the United States, and that the same are lawfully to be counted as therein certified; namely, eight (8) votes for Rutherford B. Hayes of the state of Ohio for president, and eight (8) votes for William A. Wheeler of the state of New York for vice-president. The commission has, by a majority of votes, also decided, and does hereby decide and report, that the eight persons above named were duly appointed electors in and by the state of Louisiana. The brief ground of this decision is, that it appears upon such evidence as by the constitution and law named in said Act of Congress is competent and pertinent to the consideration of the subject, that the before mentioned electors appear to have been lawfully appointed such electors of president and vice-president of the United States for the term beginning March 4, A.D. 1877, of the state of Louisiana, and that they voted as such at the time and in the manner provided by the constitution of the United States and the law.

“And the commission has, by a majority of votes, decided, and does hereby decide, that it is not competent under the constitution, and the law as it existed at the date of the passage of said Act, to go into evidence *aliunde* the papers opened by the President of the Senate in the presence of the two Houses, to

prove that other persons than those regularly certified by the governor of the state of Louisiana, on and according to the determination and declaration of their appointment by the returning officers for election in the said state prior to the time required for the performance of their duties, had been appointed electors, or by counter-proof to show that they had not, or that the determination of the said returning officers was not in accordance with the truth and the fact: the commission, by a majority of votes, being of opinion that it is not within the jurisdiction of the two Houses of Congress, assembled to count the votes for president and vice-president, to enter upon a trial of such questions.

“The commission, by a majority of votes, is also of opinion that it is not competent to prove that any of said persons, so appointed electors as aforesaid, held an office of trust or profit under the United States at the time when they were appointed; or that they were ineligible under the laws of the state, or any other matter offered to be proved *aliunde* the said certificates and papers.

“The commission are also of opinion, by a majority of votes, that the returning officers of election, who canvassed the votes at the election, were a legally constituted body by virtue of a constitutional law, and that a vacancy in said body did not vitiate its proceedings.

“The commission has also decided, and does hereby decide, by a majority of votes, and report, that as a consequence of the foregoing, and upon grounds heretofore stated, the paper purporting to be a certificate of the electoral vote of the said state of Louisiana, objected to by T. O. Howe and others, marked ‘N. C. No. 2’ by the commission, and herewith returned, is not the certificate of the vote provided for by the constitution of the United States, and that they ought not to be counted as such.”

Eight names were signed to the two judgments—a great array of ability and learning; but there was another array of seven names, not less imposing, who dissented from the technical law, and decided that the evidence proving fraud should be heard, that the case should be examined according to the facts, and that the counting authority; or its substitute the commission, was competent to that duty. By all codes estoppels are odious, and here was an estoppel pleaded in nature, if not in name. One of the Democratic commissioners was General Eppa Hunton, an officer of distinguished merit in the Confederate army, and an able lawyer from Virginia. In the House of Representatives of Congress, by force of ability and character, he had put himself among the leaders of the Democratic party in the House, and was selected by it to sit in that high court. Another was Senator Allen G. Thurman, of Ohio, born in Virginia, one of Cornelia's brightest jewels, and the only man of this day who talks like Webster—with his breadth and clearness. These seven able and learned judges, lovers of good and haters of evil, said, one and all, that the evidence in the two cases charging and proving fraud should be brought forth and heard. The light of truth, as the light of the sun, comes from God, and it was the commission's duty to open their windows and let it come in, that it might shine upon them. The commission, among the papers contained in the third certificate from Florida, had a certified copy of the election record, kept in the office of the Secretary of State; but the majority of the commission paid no attention to a certified copy of the record, under the seal of a sovereign state, nor would they send for the original record. Such, in the centennial year, was political justice as administered in the capital of the Great Western Republic.

If it be not presumption in one, who has been but an idler in the laborious field of the law, to attempt to

glean a sheaf of the precious wheat, following after a band of such trained harvesters with whetted hooks as the commission, and their satellites of the bar, I would, with humility, suggest that there is a view of this electoral question not presented to the commission, nor considered by them, which perhaps the patient and courteous reader, who has accompanied this examination from the beginning, will not be reluctant to hear—seeing that this book, in conception and development, is but a rebellion against the empire of settled ideas, indeed, is a secession from an old state, and the foundation of a new centre of authority.

A written constitution, the fundamental law of a Republic, may act *proprio vigore*, of its own force, and such must be its construction, where it was the purpose of its framers so to form it. That it was so made in the part of the constitution of the United States involved in the question submitted to the commission by the Electoral Act, is averred to be a fact proved at once by the texture of the constitution, and by its history. In consequence, the Acts of Congress requiring the certificate of the governor, and Acts of the legislatures requiring certificates of returning officers, to the official appointment of presidential electors, are unconstitutional, so far as they offer bars or impediments to consulting the original records of the appointment of electors by the convention of the two Houses of Congress, or by its deputy the commission, or by any other competent counting authority. No lawyer will controvert the soundness of this proposition. It is clear, on the face of the constitution, that its design was to allow no wall to be placed between the counting authority and the evidence of the appointment of its electors, ordained and preserved by a state. If the counting authority had any jurisdiction to inquire into the legal character of one claiming to be an elector, before his vote is counted—which was denied by no one—it had the constitutional

right to consult the record which contained the evidence of his appointment. No statute of Congress, nor statute of any state, could bar that primary right of examination necessary to the discharge of a public duty. It is a right inherent in the counting power and conferred with it, wherever that counting power may be decided to be. The constitution, in plain words, ordains that the electors, when in their college, shall sign, *certify*, and transmit sealed, and directed to the President of the Senate, the lists which contained the names of the persons voted for as president and vice-president. That is the only reference which the constitution makes to a certificate, and Congress, no more than with Holy Writ, can add to or subtract from the constitution.

If a question arise as to the legal character of the persons who certify the lists to the President of the Senate, the counting authority, naturally, necessarily, and constitutionally, looks immediately to the evidence of the state's appointment, always a matter of record (because sovereign states, in civil matters of dignity and importance, act by record), and quickly and certainly decides the question. By its wording the constitution appears to have been framed under the belief that the legislatures would appoint the electors, as at first universally was done, and the universality of the mode amounts to a construction of the constitution by those who made it. When that mode of appointment was observed, if any dispute had arisen such as occurred between Tilden and Hayes, the President of the Senate, at first recognized as the counting authority, would have sent for the record of the Acts of the legislature, and would have decided the question according to the truth contained in them. If so reasonable a proposition be true, we have the mode of action set clearly before us which the constitution required. If no record had been made by a state of the appointment of electors,

and no other convenient, certain, and proper evidence were supplied, it might be that the electoral vote of such a state would be lost. A maxim of the common law would apply to such a case—*vigilantibus non dormientibus leges subveniunt*. But forfeiture for laches, or accident, would be better than to be insulted and misrepresented by impostors foisted upon the State and the Union by an unprincipled political party and eight partisan judges.

But herein, it may be asked by the reader, does the constitution act *proprio vigore*, and is there any certain historical evidence that the fathers intended that it should so act in respect to this presidential question? That no auxiliary or explanatory legislation was contemplated by this part of the constitution, to enable it perfectly to perform its function, and that it does act *proprio vigore* in this case, is conclusively established by the fact that it was not possible in 1789, when electoral votes were first counted, to have provided an auxiliary or explanatory statute. It was necessary then for this part of the constitution to be finished by its makers, and to be made so as to act *proprio vigore*, if it was to act at all. If a controversy, such as between Tilden and Hayes, had arisen in 1789, and it might have arisen then had there been more than one candidate for the presidency, the record of the State's appointment would have been sent for by a subpoena *duccs tecum*, and it would have been examined in the presence of the two Houses of Congress, by the President of the Senate, and the decision made according to the fact as ascertained from the indisputable record. That was the contrivance which the constitution created for the transaction of that business. It was plain, direct, conclusive. In the case of Tilden and Hayes the controversy could have been determined by the records if the certificates were swept away, or notwithstanding the certificates, as readily as any of Coke's questions: "Whether earl or no earl; baron or no

no baron ; whether an alien be an alien friend, or an alien enemy ; or, whether a manor be held in ancient demesne or not.”¹ The case of the first and second certificates from Florida supplied a case in which the record should have been consulted. On the face of the certificates, one case was as good as the other, and, if acting at that early period of constitutional life, the commission could not have objected, and founded its action on the ground of any irregularity ; in other words, there could have been no bar, no estoppel or hindrance, to be pleaded. A certificate from returning officers, or any corresponding authority, as a governor, is but a personal notification ; it is nothing more. In 1789 that new court of conscience, the commission for doing justice according to the very right of the case, would have been compelled, even if supplied with the subtleties of the senator from Vermont, to confront the true issue and decide the cases upon the testimony of the election records of Florida and Louisiana. There would have been no door of escape. To every liberal understanding knowing the merits of the controversy, the judgment of the commission in both cases was evidently a foregone conclusion by a board of American politicians.

It must not be forgotten that the eight commissioners who rendered that judgment were not men of flecked and spotted reputations, gotten from the camp followers and the refuse and rejected offal of the Republican party, but were its princes and leaders, who, on the score of personal character and honour, stood with the foremost public men in the Union. But they were members of the Republican party, and as such had formed a compact with an evil spirit ; they had mortgaged their souls to a power which stood at the side of them, before them, and at the back of them, and had fixed on each word

¹ Whether a manor be so held could only be determined by consulting the record of Domesday Book, containing a survey of all the lands in England, ordered by the Conqueror.

and gesture its searching and jealous eyes. Before that grim and merciless authority, in whose service error becomes truth and vice becomes virtue, those wise senators and representatives and judges were slaves, bound by a colder and harder chain than was ever welded to the body of an African bondman. Who would enthrone in his fair country a tyrant who, in the pursuit of power, and the offices and gold that belong to power, annuls all the obligations of truth? Seek a government that raises, not one that depresses and destroys the standard of virtue and public morality, if we would have the country which we love, and which Almighty God has given us for a home—march at the head of civilization, and be a perpetual personage in history, not a buried state like Babylon the Great, that perished of its crimes and vices.

With cruel sarcasm the Republican lawyers advocated respect for the certificates of the returning officers acting under State law, because of a tenderness for the rights of the states, and for that consideration and respect received the elegant and merited rebuke of Mr. Merrick, of the Washington bar, a great advocate before the commission, but, unhappily, now dead. It is by such devices impostors would steal the livery of heaven to serve the devil in. Mr. Merrick retorted in these words: "At first I was pleased to hear my learned brothers on the other side commend the doctrine of State Rights with so much apparent zeal; but soon I felt the want of sincerity and earnestness. As I listened to their disquisition, there was brought before me the grandest and the saddest event in the history of the human race: They took him and clothed him in purple; they placed an ensign of royalty upon his brow; they put in his hand a reed for a sceptre, and, mocking, fell down and worshipped him."

On the 3rd of March, 1879, a select committee "on alleged electoral frauds in the late presidential elections" submitted their report to the House of Repre-

sentatives of Congress. The chairman was Honourable Clarkson N. Potter, one of the greatest men of the Democratic party, and one of the greatest lawyers of the New York bar. The report contains a masterly examination of the cases of Louisiana and Florida, and an extract from it is presented. It justifies and fortifies the view which I have taken of the character and destiny of the American Republic, and, that the extract may receive the full weight which ought to attach to it from the distinguished character of Mr. Potter's committee-men, I transcribe their names on this page in the order in which they are attached to the report: Honourables William R. Morrison, Eppa Hunton, William S. Stenger, John A. McMahon, Joseph C. S. Blackburn, and William M. Springer.

The committee say: "At the end of each four years the entire Federal patronage—amounting to 110,000 offices—is collected in one lot, and the people divide themselves into two parties, struggling, in name, to choose a president, but, in fact, to control this enormous patronage, which the president when elected is compelled to distribute to his party, because he was elected so to distribute it.

"The temptation to fraud, to usurpation, to corruption, thus created, is beyond calculation. A prize so great, an influence so powerful, thus centralized, and put up for contest at short recurring periods, will jeopardize the peace and safety of any nation.

"The election of a president would never lead to the effort, and struggle, and bitterness with which it is now attended, nor be followed by any question as to who was the choice of the people, nor be the subject of any attempt to defeat their will, but for the offices within his gift. No nation can withstand a strife among its own people so general, so intense, so demoralizing. No contrivance so effectual to embarrass government, to disturb the public peace, to destroy political honesty, and to endanger the common security

was ever before invented." That report was accepted by a Democratic House of Representatives, and is now a record of the government, to serve as a testimony to all ages and nations of how the Republic of the United States has developed as a form of government.

CHAPTER XV.



THE elevation of fraud, in the person of the Republican candidate to the office of President of the Federal nation, as the result of the Electoral Commission, restored the certainty that civil war, to terminate with the stratocracy, as Washington predicted, would be the grave of American liberty. The attempt to make justice and law decide the controversies of political parties in the United States suffered a total and final overthrow from the partisan determination of the Electoral Commission. The last presidential election, which seated Mr. Cleveland on the Democratic throne, when its inside is exposed to view, whilst all was tranquil on the outside, adds force to this conclusion, and points to the perilous edge on which the Republic stands at the close of each quadrennial term. So evenly were the forces of the two factions balanced, that the contest for the presidency was decided by a trifling majority in the state of New York—proving, as the great poet had said, the

“Equality of two domestic powers
Breeds scrupulous faction.”¹

When the doubtful result of the election in New

¹ “Antony and Cleopatra.”

York was communicated to Mr. Blaine, the Republican candidate, remembering the fate of Tilden, telegraphed to the Republican leaders there—"Claim everything." But the catastrophe of civil war was averted by the seasonable exhibition of force on the theatre where the politicians were preparing to re-enact Florida and Louisiana. Tammany society, in the city of New York, brought its mob battalions upon the stage. Tammany by no means was inclined to another presidential commission. It did not intend, in Mr. Cleveland's case, to have a second edition of Tilden and Hayes. If the attempt with a fraudulent count were made, Tammany was resolved to strike a first blow in the civil war; and, moreover, that it should fall on the heads of the Republican managers in their marble palaces, the contrivers and hatchers of the plot. The following letter, addressed to the author by a distinguished Democratic leader, discloses the situation at that critical time:

"The fraud of 1876 created a wholesome fear in the minds of all lovers of Republican institutions, and excited the energies of the Democratic party to resist any attempt to repeat it. That an effort in that direction was contemplated in the fall of 1884, there is good reason to believe. The election turned upon the vote of the great state of New York, and those best informed knew in advance that it would be close. Steps were taken to insure an honest count of the vote as it was cast. In an aggregate vote of nearly one million six hundred thousand, the majority for Mr. Cleveland was only about eleven hundred. The Republicans thought they had now an opportunity again to reverse the will of the people and perpetuate their power. Day after day passed, and still the country was kept in suspense as to the result. It was bruited that the ballots were being manipulated, and the city of New York was roused as it had not been since 1861. Immense masses of men paraded

the streets, shouting the names of those suspected of being concerned in the plot to cheat them out of the fruits of victory, and for a time the greatest apprehension prevailed. But the independent press of that city had so carefully collated all the facts and figures bearing upon the result, and demonstrated so clearly Mr. Cleveland's election, that finally the Republican committee abandoned the contest. The truth is, the mob had infused terror into the hearts of the property holders, and the wealth of a great city demanded that the conspirators should no longer imperil its safety."

I cannot consent to reopen this volume that I may discuss "trusts," that further development which the protective system has received in the United States, by which a combination of the class of domestic producers is enabled to establish a monopoly in the domestic market, dictating prices to the consumer; nor further to develop, since the recent quadrennial struggle, the mercenary character of the American popular mode of government, the most accessible, as every observer sees, of all the systems to the corrupt influence of money, making the Republic the government of the capitalist, not the government of the people, which it professes to be. But, on account of their eminent positions, I will cite here the testimony on this point of His Excellency Fitzhugh Lee, Governor of the State of Virginia, and of His Excellency E. M. Wilson, Governor of the State of West Virginia. In reply to an interviewer on the results of the recent presidential election, Governor Lee said: "In my opinion the Republic is controlled by the coin bags of Morton, Carnegie, and other Republican money kings, and it is no longer a people's government, as contemplated by its founders."

In his message to the legislature of West Virginia, session 1889, Governor Wilson said, in allusion to the corrupt practices in the recent presidential election:

"Whether armed legions be bought with a price to

strike down existing institutions, or the ballot in the hands of a free people be polluted by the bribe-giver and the bribe-taker, the result, in the end, must be one and the same.

"The corruption of the ballot must bring with it a loss of public confidence; and the loss of that confidence can but pave and make straight the way for the destruction of existing forms.

"Upon the ballot rests the entire superstructure of our political fabric; and its corruption is more dangerous than open revolt, for it undermines the very foundations with insidious debauchery. And yet this is a peril to which our whole country is this day exposed. Under the sham of campaign expenses vast sums of money are raised and distributed to corrupt the voter and defeat the public will. In many instances men are selected for exalted public positions whose only qualifications are enormous wealth and a ready willingness to provide money to tempt the indigent and defile the ballot-box.

"Throughout the country, for months last past, the very atmosphere has been laden with the cry of fraud. Reproach has been cast upon our own state as never before by illegal, fraudulent, and corrupt voting in almost every county within its borders. This is so palpable, that 'he who runs may read.' The capitations of 1884 were 133,522, and the entire vote, after the most active political campaign ever made in the state, 137,587. The capitations for 1888 were 147,408, and the entire vote 159,440. The difference in the capitations and the vote, in 1884, was 4,065; in 1888, it is 12,032. This shows an increase of votes in four years of 21,853, which, if legitimate, would indicate a population of 900,000, and an increase in four years of much more than 100,000. It is certain that no such increase has taken place."

CHAPTER XVI.

THE POLITICAL ADVENTURER.



THE reason why states of the popular frame do not, permanently, afford good government, but, finally, fall victim to misrule, anarchy, and army government, is, that they are controlled and run by the political adventurer—the man in search of fortune, and individual advantage, by the road of politics. Among so great a number of persons who offer their services to a Republic there must be many honourable exceptions, but they stand as exceptions, and do not affect the rule. Office is the absorbing pursuit of the politician class, and the office is valued for the emoluments connected with it. Some aspirants are actuated by the love of fame, some by the love of pleasure ; but the mass of them are swayed by the grossest motives of interest—the love of the “almighty dollar.” In their party, therefore, these eager expectants see reflected themselves, their country, and their god. Thoughts of wise men survive decay. Temples crumble, and empires pass away, but thought triumphant lives for all time. Bacon, the great heir of fame, describes the adventurer politician of the United States, although, when the “Advancement of Learning” was written, that country was as remote from the system of Europe as his New Atlantis : “The corrupter sort of mere politicians do refer all things to themselves, and thrust themselves into the centre of the world, as if all lines should meet in them and their fortunes ; never caring, in all tempests, what becomes of the ship of State, so that they may save themselves in the cockboat of their own fortunes.”

Theodore Parker was one of the lights of Boston.

He said the Democratic party of his day "was composed of young men who had their fortunes to make." He ought to have applied his keen remark to all political parties in the Republic of the United States, from the patriots who gathered around Washington's footstool, to the philanthropists who raised the slogan of abolition and made Abraham Lincoln their leader. All such combinations are held together by the cohesive power of public plunder—a sage apothegm of Calhoun. Without a politician class to be enriched and honoured by controlling government, popular states would not be created. That they are called into existence for liberty, or for any other purpose, is a false pretence of the politicians. The good of the nation is the last object they are concerned about, and the vices of the parent destroy the offspring he has engendered. The stronger prevails over the weaker interest, partial laws bring oppression, until war becomes preferable to peace. The Republic, as a rule, does not place its greatest men in the lead. A man like Webster or Calhoun is reserved for the secondary place, or to adorn a private station. Governments which do not act so as to place the highest ability and the greatest virtue in the public service must eventually succumb in the preference of mankind to such as do. The advancement, preservation, and government of society is a task so difficult, and so intricate in its details, as to require the best talent that any nation can produce, not a race of gambling politicians whose motto is: "To the victors belong the spoils."

But what force is it in Republican politics, what inexorable law, which surely delivers the government into the hands of the adventurer in politics? Why, on that theatre, as in other spheres of action, does not merit always win? The question is pertinent, and penetrates to the heart of our subject. Success is the object of the party formation, for without it the proposed objects cannot be attained. It was the motive

which banded the organization, and, logically, subordinates all other considerations. "Why go into the fight to be beaten?" the politician acutely inquires. Discipline and subordination are as necessary in that civic army as in the military service; on no other terms can victory be purchased. The reorganization of the Conservative party of Virginia, after its overthrow by the Readjuster party, establishes this truth, whilst it clearly points to that other truth, that the responsibility of the representative to the voter, except nominally, does not exist. His responsibility is to his party. To regain the government of the commonwealth the Conservatives found it necessary to introduce a discipline in their ranks which reminded an old soldier of the army, and to direct and control this reorganized corps of voters the party authority selected their ablest man.¹ No murmur of disapprobation was heard from that host of intelligent Virginians. Indeed they were contending for a great stake: to regain the control of their government, and prevent the Africanization and plunder of society. That was an immense prize for a political party to struggle for, and presents to the view a distinct and dangerous phase of Republican politics, for in every nation the mob is numerous and vicious enough, if it obtain power, to destroy it. In Republics alone do the laws render such a calamity to the State possible. To the leaders who organize and conduct the canvass, victory is of infinitely greater importance than the establishment of any policy, or the vindication of any truth. When the chase is over and the result of the hunt is distributed, the noblest prey falls to the lion, whilst the jackal gets the small game or devours the offal.

When we accept the proposition, that under the Republic government is administered by a victorious faction, the rest is consequence. As the interest

¹ Hon. John S. Barbour, now a senator of the United States.

deepens, when the Old Guard is ordered to the front, principles are denied or abjured, and victory is solicited on any terms. When the white-caps run, and the ship labours in the surf, the cargo itself is thrown overboard. At this hour a change, or we will call it a modification, is taking place in the professed principles of the national Democratic party which very strikingly illustrates the truth of that proposition. Free trade, as we have learned, from the beginning of the constitutional life, was a fundamental principle in that camp of politicians. It dates from the time when Jefferson collected the defeated Anti-Federalists, and constructed out of that material a new body. But the power of that gigantic organization is threatened with a decline. Protection has occupied the once Democratic West, and the fowler is spreading his nets in the Democratic South. First one stronghold surrenders, then another, until Richmond, the centre of the defences, hoists the protection flag. It has become evident to acute observers, such high priests as inspect the entrails of the times, that the Democratic party, notwithstanding its Herculean strength, cannot carry so great a weight of principle, and is compelled to "unload," if I may borrow a very expressive word from the vocabulary of the late President Grant, but applied by him to the Republican party. When next an ecumenical council is convened, the dogma of free trade probably will be dropped from the party creed, or an indulgence with respect to it will be published. When the traditional boundary line is erased, and the moss-covered corner-stones are removed, no distinction will remain to the parties but their names and their war cries, with the difference between "the ins" and "the outs," which no compromise can adjust, no time obliterate. Calhoun, the wizard statesman, warned his countrymen long ago that American politics were fast drifting to that conclusion. The Democratic and Republican parties will become as the

factions of the circus, distinguished only by their colours, and, like them, will fill country and town with discord and strife.

Whether it be cause or consequence, it is not material to determine, there is another force which operates to advance the adventurer to the front place in American politics. I refer to the increasing reluctance among men of substance and business to partake of the management of the parties to which they are attached. If one of them, whatever his merit or intelligence, unless he becomes a professional politician, attempts it, he painfully discovers that he is but a cipher in the throng, and has become moulded in a rigid system, controlled by its own politic maxims, which he cannot alter nor break from without injury to the party he would serve. The dream of usefulness dissolves, activity subsides, the romantic endeavour is relinquished, the man with the purged vision returns to his proper pursuits, and the party is left to the exclusive management of the expert hands in which he found it. Quiescent and obedient he moves along henceforth in the drove of voters, realizing that there is no dominion so absolute as that which a political party in America exercises over its members. Daniel Webster discovered a class among his Northern countrymen whose influence he thought ought to be felt in elections, but who kept aloof in the background, avoiding the vulgar contact and the dust of the arena. He delivered, in New York city, one of his memorable speeches, in which he warned that superior element that their supineness tended to deliver the government of society into the hands of the rabble, guided by the professional politician ; but his exhortations produced no greater effect than the ill-bodings of Cassandra. Perhaps the statesman from Massachusetts did not reflect that the class he would advise were obeying a far stronger law than the lessons of any sage or the eloquence of any orator. What law ?

One so imperative that the mind of man quickly discerns and promptly obeys it : that the successful conduct of any business requires an undivided attention. The Lord Chief Justice Coke announces to the law student the condition indispensable to success in his profession : "My lady the law must lie alone," and with all its force the aphorism applies to every other pursuit in life.

An American newspaper contains the advice of a planter of Virginia, honourably known to the nation as the President of the Congress of Farmers, addressed to the agricultural class. The counsel which emanated from that distinguished source is digested into four articles, the observance of which is deemed by him to be necessary to successful farming and planting. Under the fourth head the planter writes : " Let politics alone, except state policy as it may affect agriculture and the material interests of the state. I will not write on the subject except to say, that when an agricultural community becomes deeply interested in politics, agriculture is forgotten, and the court-house and cross-roads are resorted to to discuss political subjects."¹ Surely we have here an important truth developed, by popular self-government in America, to which every European State ought to attend before she plunges into a morass from which extrication is impossible. In the Northern and Western sections of the Union the great body of business men, in obedience to some general law, practice an abstention from politics to which the planters and farmers of the South are advised by one of their soundest thinkers. This potential force is incessantly at work in every neighbourhood, in every district, in every county, in every city, in every state of the vast American Republic, and, as by the power of an immutable decree, surrenders the government into the hands of political

¹ Colonel Robert Beverly of Fauquier county.

gamblers and adventurers. The law of the division of labour, which, in mechanical industry, Adam Smith announces as the great principle which leads to success and progress, applies with all its power to other occupations. In compliance with this mandate, as from a superior authority, politics have become a profession in the United States—a “trade,” as some contemptuously call it, and the trading politician is a stamped and recognized character. These results could not be obtained from theory, the *ignis fatuus* which danced before the Jeffersons and the Hamiltons, but only from experiment, man’s wise and trusty schoolmaster in government as in the sciences—the affable archangel who still teaches Adam.

CHAPTER XVII.

THE ENTAIL AND THE ENTAIL-LEASE.—M. DE
TOCQUEVILLE.—THÉ END.



It is not irrelevant to an examination of the American Republic to consider a force, not perhaps a part of government, but near to it, and which actively co-operates with the causes which determine its stability. As soon as a revolutionary party, under the guidance of local ambition and a despotic monarchy, had resolved to try again the exploded experiment of a Republic, the first subject which should have engaged the attention of a philosophic statesman was the agency by which the social elements might be fixed. In that order the earth had been prepared for the occupancy of the inferior animals and man. The sea, as a connecting link between the islands and continents, was left a liquid mass, but the land was made

firm. The entail, and the entail-lease, into which that tenure naturally branches, enables, through a long series of centuries, one generation to hand over to another the body politic with its unity, coherence, consistency, and stability preserved. By that means the proprietary and renter classes, united in the bonds of association and interest, those strongest ligaments, become the body of the State, and the depositary of its traditions, its national character, and its opinions. Washington Irving, at once the admirer and delineator of English rural life, thus speaks of the effect of such a division of the soil: "The manner in which property has been distributed into small estates and farms has established a regular gradation, from the noblemen, through the classes of gentry, small landed proprietors, and substantial farmers, down to the labouring peasantry; and whilst it has thus banded the extremes of society together, has infused into each intermediate rank a spirit of independence." In America, operating as a repellent force, it would have preserved the purity of the Saxon race in their new homes against the assaults of the moving hordes of emigration. Jefferson was a Nihilist of the philosophic type. He abolished the entail law, or, at least, it was done upon his motion and by his influence, as soon as Virginia had ceased to be a royal colony, and in turn he attacked every other stronghold of Conservatism. The state became under his inspiration *tabula rasa*, and the Virginians, who should have populated a great empire of their own, became as widely dispersed as the Jews. The abolition of the entail was a dispensation of instability. The people drifted from their homes to be succeeded by strangers unconnected with the past, or with each other, by a single tie. Wave of population succeeds wave, until society becomes less stable than a band of nomades.

Veneration for ancestors, traditions, and local attachments, are the ties and holdings of a community,

and these are destroyed by an excessive mobility. The family, whether humble or exalted, is the unit and base of society. Wise legislators are careful to strengthen and to guard it, but Jefferson, a man of theory of the French school, annihilates it at a blow. There is a consequence derived from the long residence of a people in their homes which is a valuable aid to government. An opinion arises, it forces itself into consideration, and finally establishes its dominion, and on conduct is a curb more persuasive and stronger than prescribed law. The innumerable social relations which arise from a tenure of this kind branch in all directions, and run and twist into every fibre of the national body, imparting to it a solidity and weight to be obtained in no other way. Reasoners extol the English constitution, reposing on English society, for its unparalleled stability; we must remember that it is obtained from the feud maintained in the kingdom since the polite Norman wrested the government from the ruder Saxon, and established it as the grundsel of the conquerors' civilization. A distinguished American author has said of that government: "There must be something solid in the basis, admirable in the materials, and stable in the structure of an edifice that so long has towered unshaken amidst the tempests of the world." It is the foundation-stone of the feud which has produced this admirable result, and when it is destroyed by the hand of unreasoning innovation, a revolution beginning at the root or base of society will have begun in Great Britain which will not run its course until an army government is established as a substitute for the present system of the empire. It is a consequence which cannot be avoided when the feud is displaced. We may throw down even the Pyramids by disturbing their venerable foundations.

The democratic government of France, which has intruded where the splendid throne of Bonaparte

stood, is prefigured in the pages of Alexis de Tocqueville, the evil germ having been wafted over the sea in the loose notes and memoranda of that author. Thus it is that by a mysterious law of retaliation America has twice overturned the French monarchy. Whilst he was in America the Frenchman was a diffident student of democracy, catching at every man's opinion and writing it down in a book. He crosses the ocean, when the scholar is transformed into the master, and he teaches democracy with the authority of an Aristotle. He gazed at the exterior of the American temple, but did not enter its penetralia. Thus he describes only the visible apparatus by which the Americans have applied the democratic principle to government, but of its interior organism, if any, by which the majority power was to be controlled, or moderated, he learned nothing, and teaches nothing. According to the political instruction which his book offers to France and to Europe, it calls for no more art or wisdom to construct a popular system of government, complicated with Federalism and Sectionalism, or any other overbearing force, than to organize and conduct a township meeting. The tourist did not at all understand the problem before him, and France could not have sent to the Federal Republic an observer who, after a two years' residence, could have written so little that was valuable on its system of government. De Tocqueville possessed a cultivated style and a lively imagination; he was an audacious, perhaps a plausible theorist, and with these advantages wrote an agreeable book. His pages abound in statements of facts misrepresented, or misunderstood, to support false theories and rash conclusions, which Benton exposes with a merciless criticism.

The philosopher, for he affected to be a philosopher, did not inquire if the gigantic democratic power, which he professed to understand and presumed to explain, worked with an equal stroke between the sections,

which he saw divided the Union into two antagonistic parts, distributing fairly the advantages and burdens of the system between them ; or whether, under a pretence of democratic liberty and equality, one had not become, under the mask of a constitution, commercially and politically the thrall of the other. Monsieur Alexis de Toqueville did not embark in that dull and laborious inquiry. He was an artist rather in search of striking pictures and pleasing contrasts, with which to entertain Europe—not a laborious searcher after truth, gathering useful facts and conclusions to offer to the Old World about a new democratic civilization which had grown up in the woods and prairies beyond the Western Ocean. He saw the fresh and brilliant civilization of North section—its universities and schools, its cities, palaces, and fertile fields, its multiplied interior connections, bringing to the seaboard a trade which covered the sea with argosies, but did not stop to inquire whether it was the result of capital and labour fairly applied by the Anglo-American in a new world, or was the earning wrung from an impoverished tributary. This inquiry would have been instituted by an acute and searching observer, and, until answered, how could he, with an honest countenance, stand up before Europe, and, as eye-witness and ear-witness, declare that democratic institutions in America were working prosperously, and offered a model to every nation of Europe.

By word of mouth, and by his commentaries, he had been instructed by Chancellor Kent as to the active powers of the Federation, but he received from his preceptor, or his book, no information touching negative powers, forces lying in repose, which ought to have been found somewhere to protect the minority, with its vital interests, from oppression by the majority, and without which a Democratic Constitutional Republic is a despotism of the worst class. Had his

investigation taken that turn, had he chosen Calhoun, at that time flooding the Union with the light of his glorious genius, instead of a New York lawyer, to introduce him to the sage doctrine of democratic government, his own reflections, notwithstanding a partial bias in his instructor, must have forced him to the conclusion that the policy which he had crossed the ocean to understand and report was, as a constitutional experiment, a dead failure. Forty years ago M. de Tocqueville would have published to listening Europe the truth so imperfectly inculcated in this book—that constitutional government of the republican type is but a philosophic dream. Instead, he has sown broadcast over Europe dragons' teeth which may chance to spring up armed men. Whether better success has attended constitutional government where it has contracted monarchical and aristocratic connections, or whether, where that has been done, it is not but a modification of the democratic ascendancy, as in the British Isles under the influence of successive reform bills, is an inquiry which does not fall within the scope of this examination. In the fullness of time the affable archangel will reveal that truth to Adam. In every abode of civilization great interests are discovered, represented by minorities, which government is much concerned to plant and to cherish, and no nation, unless smitten by God's frown, would accept a political organization which enables the selfish strong to devour the weak, and which finally launches society on a roaring sea of military factions. If, then, the Republic is a terror to be shunned, not a Paradise to be sought, what forces, what agencies can a people employ with which to protect themselves from so formidable a danger? How shall they quarantine against so fell a disease? There is but one agency by which the work of protection can be effectually afforded. The people, the nation, must come to the front, and in their own persons encounter

the adversary. Notwithstanding its illusions, and baits, they must learn to know the true character of the Republic, and then actively follow the advice given a hundred years ago by Edmund Burke to the British people, when they were beleaguered by the charms of the Gallic sorceress: "Republican spirit can only be combatted by a spirit of the same nature: of the same nature, but informed with another principle, and pointing to another end."

THE END.



APPENDIX.

NOTE BY THE AUTHOR.



THE claim of a Federal court jurisdiction over state officers obeying a state law, asserted conspicuously in the adjudicated cases of *Osborne against the Bank*, 9th "Wheaton's United States Reports," p. 738, and afterwards in *Poindexter against Greenhow*, 114 "United States Reports," p. 288, has not been abandoned by the Supreme Court, but is reasserted in the court's opinion in the *Habeas Corpus* cases decided at its October term, 1887. The opinion says: "The legislation under which the defendant justified being declared null and void as contrary to the constitution of the United States, therefore left him defenceless, subject to answer for the consequences of his personal act in the seizure and detention of the plaintiff's property, and responsible for the damages occasioned thereby." The state of Virginia also, whose sovereignty, in common with that of every other state of the Union, has been invaded by that doctrine, has not retreated from her position in that memorable contest, as "the testimonial" shows, voted by her legislature approbatory of the conduct of her officers in the *Habeas Corpus* cases. As the contest is not over, I reproduce in this annex my answer to the rule in the Federal Circuit Court, that the public and the gentlemen of the legal profession may have placed before them in a con-

venient form the grounds upon which I questioned the legality of Judge Bond's action. I append two other papers connected with the subject, but not official in their character.

ANSWER OF JOHN SCOTT, OF FAUQUIER,
TO JUDGE BOND'S RULE TO
SHOW CAUSE.

Filed September 22nd, 1887.

Honourable Hugh L. Bond, Judge of the Circuit Court of the United States for the Eastern District of Virginia, at the Court-house in Richmond :

May it please your Honour : In compliance with a rule issued by your Honour against me to show cause before your Honour, at the court-house in Richmond, on the 22nd day of September, 1887, at eleven o'clock a.m. of that day, why I should not be attached for contempt in disregarding a certain restraining order of your Honour, made in the cause of Jas. P. Cooper, H. R. Beeton, F. J. Burt, *et als. v. Morton Marye*, auditor, &c., R. A. Ayers, attorney-general, &c., *et als.*, on the 6th day of June, 1887, I appear now in your Honour's court, and submit this paper, which contains my answer to the said rule.

Your Honour's restraining order forbade me, as commonwealth's attorney for the county of Fauquier, to discharge certain duties imposed upon me, as one of the commonwealth's attornies of the state of Virginia, by a statute of the legislature approved by the governor, May 12th, 1887, which in its 14th section provides, in case of disobedience by any officer to it, a pecuniary penalty not less in amount than \$100, nor greater than \$500.

As your Honour well knows, it is a principle recognized by publicists of all civilized countries, as the foundation of political life, that a citizen or subject doing an act enjoined upon him by the state is covered by the panoply of the state, and is exempt from every degree of personal responsibility except to his own sovereign.

As a state can act only through the agency of individuals, this immunity is necessary to enable it to preserve itself and perform its other high functions.

An example of the application of this public law occurs in the history of the United States in the case of the state of New York against McCloud, a British subject, who was released from prison by the direction of Mr. Webster, secretary of state, ordering a *nolle prosequi* addressed to the attorney-general of the state of New York. It was a command of the political power addressed to the judicial power, and was based on the fact that McCloud's action had been adopted by the British government as one performed by its authority. ("Webster's Works.")

The principle of exemption referred to applies with all its force to the states of the American Union and to their agents, for these states are admitted to be bodies politic in the highest and completest sense of the words. (*Poindexter v. Greenhow*, 114 "United States Reports," p. 288.)

But it is made a condition by that decision, to enable a defendant to avail himself of the exemption, that "It is necessary for him to produce a law of the state which constitutes his commission as its agent, and the warrant for his act." (*Ib.*)

With this condition I comply now by directing your Honour's attention to the law of Virginia, before referred to, and to the third section, which is in these words: "The proceeding shall be by motion in the name of the commonwealth, on ten days' notice, and shall be instituted and prosecuted by the attorney for

the commonwealth of the county or corporation in which the proceeding is; or, if it be instituted by direction of the auditor of public accounts, in the circuit court of the city of Richmond."

This Act of Assembly was passed obviously with the design to induce the holders of tax-receivable coupons to submit them for identification and verification, as required by the previous Act of January 14th, 1882, the condition upon which the commonwealth allowed her treasurers to receive the coupons for taxes.

This law has been examined by the Supreme Court of the United States in *Antoni v. Greenhow*, and it was decided by that final arbiter to be in accordance with the constitution. (107 "United States Reports," p. 770.)

The statute to which I have referred in justification of my acts, being designed simply to render a previous statute effectual, must be regarded as equally constitutional with it; for the means are appropriate, and therefore ought to protect me from the censures of this court.

But in a very high quarter it is contended that if the state law, which the agent or officer obeys, be subsequently held to be unconstitutional by the court trying the cause, it becomes a nullity, and does not protect the officer from penal consequences; for only those laws—such is the doctrine—which are decided to be constitutional, can be regarded by a Federal court as mandates of the state; an unconstitutional law, or such as a majority of the court may choose to say is unconstitutional, being but the unauthorized act of the individuals who compose the state government.

Thus is a state separated from its government, without which it ceases to be a state.

To enable the learned judges to reach this eccentric conclusion, it was found necessary to define a state to

be "an ideal person, intangible, invisible, immutable," and incapable of wrong or error. (Mr. Justice Mathews in *Poindexter v. Greenhow*, p. 291.)

Thus, by the astuteness of a lawyer, a state is transformed into a mythical personage; along such strange lines does the judicial imagination sportively wander!

From what source that definition of a state of the Union was obtained is not known to me; but certainly it was not obtained from the constitution and laws of the United States, the only lexicon which this court will consult in a case which so deeply concerns the highest franchise of a sovereign state, the liberty of its citizens, and the obedience of its officers.

May it please your Honour, a state of the American Union is not a myth, but is a living corporation. It is composed of a collection of individuals, inhabiting a defined geographical space, with a government and laws to organize and impart to them the characteristics of a body political, and which maintains constitutional relations with the government of the United States.

Thus defined a state is tangible, visible, mutable, and is capable of doing wrong and committing error, as the secession of Virginia and the other reconstructed states of South section will doubtless prove to so loyal a citizen as Mr. Justice Mathews.

The fourth section of Article 4 of the constitution provides that "the United States shall guarantee to every state of the Union a Republican form of government." To convince your Honour that this guaranty has been complied with in the case of Virginia, I have but to refer to the readmission of that state into the Union after the close of the civil war with a constitution accepted as Republican by Congress. That was an act of the political power; it binds all, and this court cannot controvert or annul it.

Your Honour will take judicial notice that the Re-

publican constitution of Virginia, accepted by Congress and guaranteed by the United States, created a government of the people of Virginia, who are the state of Virginia, and that its government must be presumed by this court to be conducted in accordance with their wishes and by their commands. Its acts are their acts. They bind in contemplation of law as much as the acts of any deputy can bind his principal. This presumption of law, not the Supreme Court, in the plenitude of despotic power, seeking to subordinate the states to its absolute dicta, can break down or set at naught. Particularly is this true in this deplorable debt controversy, out of which this constitutional problem has arisen—a flower grown from a fetid soil—so interesting to every intelligent mind in the United States. It is known that over it the state of Virginia, or, to speak with a stricter propriety, a majority of the political body, has passionately taken jurisdiction, moving its representatives as puppets and dictating legislation in relation to it.

If this reasoning be correct, I conclude that, whether the Act of May 12 be considered constitutional or unconstitutional, it is equally the act of the state of Virginia, and that I, its commanded agent and officer, am not in contempt because, when placed in the dilemma of contrary orders, I have yielded obedience to my natural sovereign whose bread I eat and whose laws I have sworn to obey whenever I act as commonwealth's attorney. This, then, may be received as an established theorem: The unconstitutionality of a statute in cases like this does not render it less the act of the state; nor less effective in protecting the agent who obeys it from legal responsibility to any other authority.

The state which directs my official conduct is, by the law of the civilized world, accountable for it, and to the state of Virginia I refer your Honour as the responsible party in this case.

Arraign Virginia before your judgment seat ; visit your penalties on her head—not on me, her agent and subaltern.

But another deduction may be drawn from this reasoning which it is well not to overlook in this place.

If it be true, as a constitutional proposition, that all the acts of a Republican government are assumed to be the acts of the state, and that this ruling of the Supreme Court is, indeed, a blow struck at the sovereignty of the people of the states, it is a logical consequence that when a Federal court takes jurisdiction of a state officer it thereby assumes jurisdiction of the state itself.

To hold otherwise is to evade its eleventh amendment, and to treat the constitution with contempt, instead of with honour and obedience.

A single consideration will set this truth very clearly before your Honour.

If, by afflicting the agents or officers of Virginia with imprisonment and confiscation, the Supreme Court can succeed in forcing the treasurers to accept coupons without verification and upon simple tender, upon whom, I ask, does the consequence fall? Not upon the treasurers ; not upon the commonwealth's attorneys. The consequence falls alone upon the state of Virginia, whose treasury, by this means, will have been bankrupted by unconstitutional action of the Supreme Court. The Supreme Court needs not to be informed that behind those treasurers and these commonwealth's attorneys the state of Virginia stands to be affected by all the decisions against them.

Through all these mazes and crooked paths, Virginia is the party whom the Supreme Court is seeking to reach ; that state is the game they are hunting. Although the only party in interest, Virginia is not made a party to the record, because the eleventh amendment, which forbids a state to be sued in a

Federal court by an individual, awkwardly stands in the way. No other reason can be assigned for the omission to stand her at the bar of the Supreme Court. Surely your Honour will allow that this court, because it is forbidden to entertain a suit against the state of Virginia, cannot therefore lay violent hands on me. A defect of power over the state is not a grant of power over the citizen.

This defect of jurisdiction significantly suggests that when the states fashioned the constitution they did not design to confer upon the Federal court that jurisdiction, and it affords strong support to the opinion that when the constitution declares a state legislature shall not pass any law impairing the obligation of contracts, it did not mean to include contracts made by the state itself, which, as a body political, it had the election to perform or not according to the dictates of its morality.

If, finally, it comes to be decided—for this great question is yet in a state of fluctuation—that a Federal court can constitutionally step between a state of the Union and its officers and agents, and absolve them from obedience to it, a most fatal blow will have been struck at the existence of the states of this Union.

The clouds will have begun to gather, and preparation made for those evil times which prognosticators foretell are ahead of this Republic.

The states called this Union into existence, and from having been the massive pillars of a Federal system, they will have sunk down into the degraded vassals of the Supreme Court.

Your Honour will be pleased to take notice that this Federal Union, designed and constructed by the fathers of the Republic for the habitation of a free people, may be destroyed as effectually by a consolidation of the states as by red-handed secession. When a stretch of judicial power is proposed which, if successful, must produce that result, surely, by this court, for that

reason, it ought to be condemned as unconstitutional ; but if your Honour shall reject my arguments as vain and illusory, and shall decide that I have acted in contempt of your Honour's authority, I am here to abide the consequences of your Honour's displeasure.

All of which is respectfully submitted.

JOHN SCOTT,
Commonwealth's Attorney for
Fauquier County, Virginia.

Richmond, September 22nd, 1887.

TO THE PEOPLE OF FAUQUIER COUNTY.

Fellow-citizens : I have just been released from confinement in the city jail at Richmond, to which I had been condemned for an act of disobedience as commonwealth's attorney by His Honour, Hugh L. Bond, Judge of the Circuit Court of the United States for the Eastern District of Virginia. That all may understand, it is proper that I should explain to you the cause of so unprecedented an event in the history of Virginia, perhaps unprecedented in any of the United States.

On the 11th day of June, 1887, I was served with an order which issued from Judge Bond's Court, restraining me from "bringing or commencing" a suit against any person who had tendered tax-receivable coupons in payment of taxes due the state. By an act of the legislature of Virginia of May 12, 1887, I was directed, in common with the other commonwealth's attorneys of the state and with the attorney-general, after a ten days' notice, to institute suits against the very parties whom Judge Bond's order commanded me not to sue. In case of a disobedience

to any of its provisions by an officer of the state, the statute further provided a pecuniary penalty not less in amount than one hundred nor greater than five hundred dollars. By these conflicting authorities I was placed in a position in which I was compelled to choose which I would obey. Trained in the school of Democratic States Right politics, which affords the only unerring clue to the meaning of the constitution, I did not hesitate, but immediately informed the deputy marshal, who served the process on me, that I would not obey the restraining order of Judge Bond. I acted in accordance with this determination, gave the required notices, and at the ensuing term of the Circuit Court of the county, recovered judgment in more than thirty cases against recusant tax-payers, who had offered to pay their dues to the state in unverified, perhaps spurious, coupons. After I had issued the notices required by the Act of May 12, but before the judgments were obtained, there was served upon me by the deputy marshal a rule commanding me to appear in Judge Bond's court at Richmond on the 22nd day of September, at 11 o'clock a.m., and show cause why I should not be attached for the alleged contempt of disobedience to his restraining order. In compliance with it I appeared and showed cause in a written answer which was published in one of your county papers, "The True Index," to which I respectfully ask leave to refer for the grounds of my justification. It is enough for me to say now, that it was evident to me, if so great a power as that claimed by this Federal judge was to be treated as conceded law, that the powers of self-government of the people of every state of the Union were virtually annulled, for it is clear that it is only through the obedience of state officers to state laws that the people of any state can exercise the franchise of self-government. I maintain now, as I did in Richmond, that the constitutional doctrine is, in respect to this

matter, that state officers are responsible only to state authority, not being in any degree responsible to Federal authority. In this great stride towards a consolidation of the states, I felt it to be my duty to meet the issue promptly and firmly, and so to act as to bring it, if possible, before the supreme judicial tribunal of the Union, where it could be adjudicated in the face of the nation, and from which, if the judgment were adverse, an appeal could be taken to the states in the form of an amendment to the constitution, in order to curb excessive jurisdiction in Federal courts. The decision of His Honour Judge Bond was against me, and I was condemned to pay a fine of ten dollars with the costs, to dismiss all pending suits upon tax bills, and to enter satisfaction of every judgment that had been obtained. In default it was ordered that my person should be taken into custody and detained until a full compliance with the terms of the judgment. I refused obedience, and was confined in the city jail at Richmond, from which I applied for a writ of *habeas corpus* to the Supreme Court of the United States, which, if allowed, would bring the legality of Judge Bond's action before that court for revision. The writ was granted, and the object attained which I had desired from the beginning. After this case has been heard and determined you will all know, fellow-citizens, whether self-government can be forcibly taken from the people of a state by a Federal judge at the motion of a combination of foreign suitors. After I had reached Richmond I discovered that the honourable attorney-general of the state, Mr. Rufus A. Ayres, and the attorney for the commonwealth of the county of Loudoun, ex-judge J. B. McCabe, likewise bade defiance to the usurping order of the Federal court. Their cases, resting on the same principle, were heard with my case. With me those officers of the state of Virginia were sentenced to imprisonment, with me they were

confined in jail, and with me applied for and obtained writs of *habeas corpus*. United by a common cause we are now awaiting the decision of the Supreme Court upon our applications under those writs. Since it was organized never has that high court been called upon to determine a question of so great delicacy and importance—the establishment of the frontier in cases of this character between Federal power and the coterminous jurisdiction of the states. We will know then people of Fauquier ! whether the Supreme Court is the trusty guardian of the constitutional rights of the states, or stands ready to destroy them under the false pretence of construing the constitution—sapping your system of government by the insidious arts of the lawyer.

Respectfully,

JOHN SCOTT,

Commonwealth's Attorney.

A CELEBRATED CASE.

OSBORN AGAINST THE BANK—AN INTERESTING
DISCUSSION. SOME POINTS MADE BY MR.
JOHN SCOTT, OF FAUQUIER COUNTY.

To the Editor of the Richmond Dispatch.

It will not be considered irrelevant, it is hoped, at this time and in this place, to invite attention somewhat particularly to one of the utterances of the Supreme Court, speaking through Mr. Justice Matthews, at its October term, 1887, in the Virginia Habeas Corpus cases, that silence may not be construed into acquiescence. Several points were decided in that case important to the people of Virginia to which

in the first place allusion may be made. The decision settles that the commonwealth has the power to order suits to be instituted and judgments recovered on the tax bills of such persons as tendered coupons, and that tax-receivable coupons cannot be forced into the treasury of the state until after they have been duly verified. That decision informed us, too, that Federal courts could not be converted by the creditors of the states into debt-collecting agencies, nor could they be used by London speculators, who had purchased coupons, to realize their expectations of gain. Not the least valuable feature of the adjudication was that part of it which determined that being a party to the record is not the only test that a suit is against a state, and so within the prohibition of the eleventh amendment of the constitution. That hard, narrow, and inflexible rule of construction with almost a full chorus of voices is repudiated by the Supreme Bench as receiving no countenance from the constitution. But, in the slow progress of events, the correction did not come until after the decision had fulfilled its mission of evil and enabled the Federal government to force the United States Bank—an unconstitutional creation of Congress, as is now agreed and was then contended—on a protesting state of the Union having that large residuum of sovereignty now accorded by the Supreme Court to each state. A more enlightened canon of construction has been revealed to the judges and announced in the Habeas Corpus cases, although it is a subject of surprise and regret that they did not adhere to so sound a rule of interpretation in every part of their opinion. But they had gone wrong in a previous case and supposed it necessary to defend their infallibility. Such is an American court—*nulla vestigia retrorsum*. The new rule for construing the eleventh amendment is expressed by Mr. Justice Mathews in these excellent words, which deserve a place in every judge's memory: "To secure the

manifest purpose of the constitutional exemption guaranteed by the eleventh amendment requires that it should be interpreted, not literally and too narrowly, but fairly and with such breadth and largeness as effectually to accomplish the substance of its purpose. In this spirit it must be held to cover not only suits against a state by name, but those also against its officers, agents, and representatives, where the state, though not named as such, is nevertheless the only real party against which alone in fact the relief is asked, and against which the judgment or decree effectively operates." This language with precision indicates the proper road. Other judges will tread it, and it will become a recognized highway. The judges of the court, Mr. Justice Mathews foremost among them, have had the courage and strength to break a fetter of iron fastened on them by preceding courts, for which they merit the applause of the nation. It would have been fortunate for the states had the opinion prepared by the learned judge ended here. But it not end here. A legal proposition is advanced containing an evil germ which in its development will produce great mischief unless eradicated from the judicial mind. "The legislation," continues the opinion, "under which the defendant justified being declared null and void, as contrary to the constitution of the United States, therefore left him defenceless, subject to answer for the consequences of his personal act in the seizure and detention of the plaintiff's property and responsible for the damages occasioned thereby." (Pamphlet edition of the case, p. 25.)

This was intended to justify Poindexter against Greenhow, 114 "United States Reports," p. 288, likewise a Virginia case, and which sets heavily upon the conscience of the learned judge who delivered the opinion in that case, as his purified vision informs us. That was a judgment against a local treasurer for distraining the property of a tax-payer who had tendered

coupons. The treasurer acted under the mandate of a statute which was vouched to justify the seizure, and was produced in court. Taken in connection with the facts of the case, the statute positively established the relation of principal and agent between Virginia and Greenhow. As an artificial and legal person a state can proceed in no other way than through the medium of an agent; and the suit instituted against Greenhow was one brought against the state of Virginia, of which the court had no jurisdiction. The only question before the court was one of fact—Did the agency exist? As to this point, no room was left for doubt by the circumstances of the case and the words of the law. Why, then, was not the suit dismissed? The reason given is peculiar, and shows the manner in which those supreme beings argue when they mean to evade the constitution and make it their jest-book. They allege that the statute of the state, in their opinion, was unconstitutional. But that could not effect the *fact* of the agency, which had been proved, and upon which the constitution instantly operated. There is no way open for escape from the difficulty except roundly to assert again that a state can do no wrong, and that an unconstitutional statute is not its act. With his large knowledge and great ability Mr. Justice Mathews knows that there is no such fiction recognized by our law, and that the allegation is not true. The collection of persons who constitute a state are exposed to all the influences of error and passion, and are supplied with the means of giving them effect, and so are as peccable as any individual of the mass. Why does the Supreme Court of the United States found an important decision upon a fiction, not of law, but of fact, and shown to be a fiction by the most undeniable testimony? Burke said a man becomes a worse reasoner by being made a prime minister. Had he lived in our day he would have applied his remark to a judge of the Supreme

Court. If a Federal judge has the right to order about state officers, there is an end of self-government by the people, whose franchise is exercised by the obedience of state officers to state laws. The states cannot afford to surrender this point. It destroys all subordination to authority in a state. The district judges, the circuit judges, and the Supreme Court judges will gallop their cavalry over the constitutions and laws of the states. There is but one mode of redress for this great evil, which is to limit the term of the judicial office. Irresponsibility is opposed to the genius of the Republic, and sows a harvest of dragons' teeth.

These tricks of logic and feats of legerdemain are resorted to to enable the Supreme Court substantially to retain a jurisdiction which has been disallowed by the constitution. The eleventh amendment is couched in the following language: "The judicial power of the United States shall not be construed to extend to any suit in law or equity prosecuted against one of the United States by citizens of another state, or by citizens or subjects of a foreign state."

But the citadel of this heresy is not Poindexter against Greenhow, but the older and more authoritative decision of Osborn and others, appellants, against the president, directors, and company of the Bank of the United States, respondents, reported in 9th Wheaton, 738. It is not without hesitation that I venture to criticise that celebrated opinion; but it must not be forgotten that error is vulnerable and may be challenged by any adversary. Error is not encased in truth's divine armour. The principal facts of that case are as follows: By an Act of the Ohio Legislature a tax was imposed on each branch bank of the United States transacting business in that state. In accordance with this law and on the authority of Osborn the auditor, as provided in the statute, Harper entered the bank at Chillicothe and carried off coin and notes

sufficient to satisfy the tax and delivered them to Curry, the treasurer, who placed them to the credit of the state on the treasurer's books, but kept them in a trunk separate from other money in the treasury. The property taken from the bank afterwards came to the hands of Sullivan, Curry's successor in office, who receipted for it as treasurer, "not otherwise," as his answer states, but retained it in the trunk where it had been placed by Curry. On the 14th of September, 1819, a bill was exhibited in the Circuit Court of Ohio against Osborn and Harper, and a writ of injunction was served on Harper whilst on his way to Columbus, and on Osborn before Harper reached Columbus. In September, 1820, a supplemental and amended bill was filed, making Osborn, Harper, Curry, and Sullivan parties. On that bill the cause proceeded to a final decree against the defendants, and was appealed to the Supreme Court, where it was heard at the February term, 1824. The court treat as undeniable law, and base their reasoning upon it, that a principal in a trespass is jointly liable with the agent who commits it, and that it is error if he be not joined as party to the suit. The court say: "The fact is made out in the bill that Osborn employed Harper to do an illegal act, and that he is jointly liable for it is as well settled as any principle of law whatever" (p. 837). Putting the eleventh amendment out of view, the law as stated applied to Ohio and its agents, in that transaction, the court saying: "The direct interest of the state in the suit brought is admitted, and had it been in the power of the bank to have made the state a party perhaps no decree could have been pronounced in the cause until the state was before the court. But it was not in the power of the bank to have made the state a party, and the very difficult question is to be decided whether in such a case the court may act on the agents employed by the state and on the property in their hands" (pp. 846-7).

Whilst the constitution remained unaltered by the eleventh amendment, if it would have been incumbent on the bank to have united Ohio as a defendant in the suit, it is not clear that the simple incorporation of the amendment by the constitution would have the effect of throwing on the agents and subordinates of an excused and exonerated political power the responsibility for a trespass which it had designed and caused to be executed, and in which the agents implicated were involuntary actors. The states cannot accept this as the true meaning of the eleventh amendment, however agreeable and suitable it may appear to a bench of irresponsible judges. The sounder logic would appear to be that when the constitution of the Union, moved by weighty public considerations, excuses the state, the contriver and true executor of an illegal act, the amnesty is extended to the agents controlled by the state. It is a principle of universal justice never questioned before, and is as applicable to civil as to criminal jurisprudence, that when a principal offender is pardoned or his offence condoned the guilt of the accessory is thereby extinguished. The shadow disappears with the destruction of the substance which cast it. When the obligor in a bond is released we do not hold the surety bound. The judges of the Supreme Court are not legislators, at least that is the design of the constitution, and they ought to confine themselves to a conscientious construction of the law. It is not within the scope of the Federal plan to have judge-made law. If the judges desire an extension of jurisdiction to round and finish their system of remedies let them obtain it by legitimate means, not get it by border raids on the states. They ought to know, and do know, that a refusal by the constitution of a court jurisdiction over a state is not a grant of it over the agents of a state as it appears to be thought. The clinging by the court to a jurisdiction forbidden by the constitution diminishes confidence in a tribunal which

must stand, as other courts do, on their rendered reasons. The sum of the matter is this: the judges of the United States have been expelled from a jurisdiction by the front door, and by false keys they have re-entered by the back door.

It will afford an additional view of Osborn against the Bank, on which the learned brothers so greatly rely, if we step back in the life of the constitution to a period anterior to the birth of the eleventh amendment. The record then would exhibit the state of Ohio as a joint defendant with Osborn, Harper, Curry, and Sullivan. It is known to every reader that it is an acknowledged principle of the superior law of nations, which attaches to every domestic code and is administered with it whenever a case arises, that an accredited agent of a government is not personally responsible for actions performed in a line of prescribed duty, but is covered by the ægis of its authority. This condition is indispensable, for without it governments could not command the obedience of their subordinates, and it attaches as an incident of sovereignty and Home Rule to every state of the American Union. Under the authority of this law, of universal application wherever civilization has planted its banner, the bill against Osborn, Harper, Curry, and Sullivan should have been dismissed, but retained as to Ohio, as soon as the relation of the defendants was discovered by the court, for with hands on the state there could have been no failure of remedy, which is considered so important a matter by the Supreme Court. Yet a case may be remediless if the constitution has so ordered, and it may be the painful duty of the Supreme Court to say so. There can be no doubt of the authority of a court of the United States to administer the public law. It is so decided in this Ohio case. The appellants contended, when they disputed the jurisdiction of the Circuit Court, that their case did not arise under a law of the United

States, because several questions might be raised in it which depended on general principles of law, and not on an Act of Congress. But the court answered : "A cause may depend on several questions of fact or law. Some of them may depend on a construction of a law of the United States, others on principles unconnected with that law. . . . We think, then, that when a question to which the judicial power of the Union is extended by the constitution forms an ingredient in the original cause, it is in the power of Congress to give the Circuit Court jurisdiction of that cause, although other questions of fact or law may be involved in it." (Pages 820-23.)

The eleventh amendment was intended to embrace the public law applicable to suits against states—to prohibit them when brought by individuals, and to affirm the immunity of their agents performing a prescribed duty. The immunity of the agent does not depend on a supposed legality of his acts, as Mr. Justice Matthews appears to suppose, but is obtained from the high source from which the command comes to him, and which he is not at liberty to disobey. The legal quality of the act does not enter into the question. Free agency by the law of reason is the source of responsibility : it ceases with compulsion, and a penalty inflicted by a state for non-obedience is compulsion.

It would appear from a perusal of Osborn against the Bank, as reported, that the public law, which bore so directly and conclusively on the case, was passed over in silence, for the court say : "It is admitted that the defendants would be liable for the whole amount in an action at law ; but it is denied that they are liable in the court of equity." See also the argument of Mr. Clay of counsel for the bank : "The state is not a formal party on the record ; and that the state is not necessarily a party by reason of its incidental interest, is conceded by the admission that the bank

might have recovered in trover, trespass, or detinue, against the defendants, who actually took the money." (Mr. Clay, page 797.)

In recent cases the discussion has pressed into wider bounds. See the opinion of Mr. Justice Matthews in *Poindexter against Greenhow*.

Your obedient servant,

JOHN SCOTT,
Of Fauquier.

[This newspaper article was written and published immediately after the final decision of the cases.]

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